

9615
No. 12437

United States
Court of Appeals
for the Ninth Circuit.

—
JAMES ANTHONY ALLEN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record
In Three Volumes
Volume I
(Pages 1 to 450)

Appeal from the United States District Court,
Eastern District of Washington
Northern Division.

FILED

FEB 21 1950

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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James Anthony Allen.

In the District Court of the United States for the
Eastern District of Washington, Northern Division
Criminal No. C-7975

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES ANTHONY ALLEN, FRANCIS CLAY-
TON KEANE, and JOSEPH VALENTINE
GRISMER,

Defendants.

INDICTMENT

Violations:

Title 18, U.S.C.A., Sec. 338,

Using Mails to Defraud.

Title 15, U.S.C.A., Sec. 77(q),

Fraud in Sale of Securities.

Title 18, U.S.C.A., Sec. 88,

Conspiracy.

The grand jury charges:

Count I.

(Using Mails to Defraud 18-338)

1. Prior to June 1, 1945, and continuing to the date of this indictment, the defendants, James Anthony Allen, Francis Clayton Keane, and Joseph Valentine Grismer, devised and intended to devise the following device, scheme and artifice to defraud purchasers and prospective purchasers of stock of Lucky Friday Extension Mining Company and

Pilot Silver-Lead Mines, Inc., both Idaho corporations (said corporations hereinafter sometimes referred to as "Extension" and "Pilot," respectively, and said purchasers hereinafter sometimes referred to as "investors"), and to obtain money and property by means of false and fraudulent pretenses, representations and promises: That said defendants would and did promote and organize Extension and Pilot and issue a large portion of the stock of these corporations to themselves, but would and did conceal the fact that defendant Allen was a promoter of these corporations or was to receive any part of the stock to be taken by defendants; that defendants in order to conceal the true amount of stock issued to them would and did cause large blocks of such stock to be issued to Elmer E. Johnston of Spokane, Washington, and James E. Gyde of Wallace, Idaho, under the pretense that such stock was in payment of attorneys' fees, but with the secret arrangement that a portion of such stock or the proceeds from its sale would be turned back to defendants; that defendants would and did cause these corporations to sell stock to investors upon the representation that the proceeds therefrom would be used by these corporations for the exploration and development of the mining properties of Extension and Pilot respectively; that defendants would not maintain proper books and records of account but would and did conceal from the stockholders of said corporation information concerning the receipt and expenditure of moneys of

these corporations; that defendants would and did appropriate and divert from these corporations a large amount of such corporate moneys to their own use and benefit; that further, defendants, in order to create an appearance of mining activity on the part of these corporations and to increase the market value of defendants' promotion stock of Extension and Pilot, would and did spend a small portion of the funds belonging to these corporations on the mining properties of Extension and Pilot, whereupon, defendants would and did dispose of their promotion stock by selling it on the market to the investing public, without disclosing the fact that large amounts of the funds of these corporations had been appropriated and diverted to defendants' own use and benefit; and that defendants would and did defraud purchasers of stock of Extension and Pilot by means of deceptive, misleading, false and fraudulent pretenses, misrepresentations and promises, well knowing at the time that such pretenses, representations and promises were and would be false when made, including among others, and in addition to those heretofore specified and in the manner heretofore described, representations and promises: as to the use of the net proceeds to be received from the sale of Extension and Pilot stock by these corporations; as to the names of the promoters and persons in control of these corporations; as to the fact that the promoters would hold their stock for investment; as to the accounting safeguards which would

insure the proper use of the funds of these corporations; and as to the amounts of stock issued to promoters and for legal services.

2. That on or about September 20, 1945, at Spokane, in the Northern Division of the Eastern District of Washington, and within the jurisdiction of this court, the defendants, James Anthony Allen, Francis Clayton Keane, and Joseph Valentine Grismer, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, did knowingly cause to be delivered by mail, according of the direction thereon, a certain letter addressed to E. J. Gibson & Co., 5 Wall Street, Spokane, Wash., said letter having theretofore on or about September 19, 1945, been placed or caused to be placed by the said defendants in an authorized depository for mail matter to be sent or delivered by the Post Office establishment of the United States according to the directions thereon.

All of which acts of said defendants were against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided (Section 338, Title 18, U.S.C.A.).

Count II.

(Using Mails to Defraud 18-338)

1. The grand jury realleges all of the allegations of the first count of this indictment except those contained in the last paragraph thereof.

2. That on or about June 13, 1946, at Spokane,

in the Northern Division of the Eastern District of Washington, and within the jurisdiction of this court, the defendants, James Anthony Allen, Francis Clayton Keane, and Joseph Valentine Grismer, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, did knowingly cause to be delivered by mail, according to the directions thereon, a certain letter addressed to Ben Redfield, 516 Radio Central Bldg., Spokane 8, Wash., said letter having theretofore on or about June 12, 1946, been placed or caused to be placed by the said defendants in an authorized depository for mail matter to be sent or delivered by the Post Office establishment of the United States according to the directions thereon.

All of which acts of said defendants were against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided (Section 338, Title 18, U.S.C.A.).

Count III.

(Using the Mails to Defraud 18-338)

1. The grand jury realleges all of the allegations of the first count of this indictment except those contained in the last paragraph thereof.

2. That on or about May 25, 1946, at Spokane, in the Northern Division of the Eastern District of Washington, and within the jurisdiction of this court, the defendants, James Anthony Allen, Francis Clayton Keane, and Joseph Valentine Grismer,

for the purpose of executing the aforesaid scheme and artifice and attempting to do so, did knowingly cause to be delivered by mail, according to the directions thereon, a certain letter addressed to E. J. Gibson & Co., 5 Wall St., Spokane, Wash., said letter having theretofore on or about May 24, 1946, been placed or caused to be placed by the said defendants in an authorized depository for mail matter to be sent or delivered by the Post Office establishment of the United States according to the directions thereon.

All of which acts of said defendants were against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided (Section 338, Title 18, U.S.C.A.).

Count IV.

(Fraud in Sale of a Security—15-77(q))

1. That the defendants, James Anthony Allen, Francis Clayton Keane, and Joseph Valentine Grismer, so having devised the device, scheme and artifice to defraud described in paragraph 1 of the first count of this indictment and hereby incorporated by reference, for the purpose of and with the intent of employing said device, scheme and artifice to defraud, did, in the sale of a security by use of the United States mails, employ said device, scheme and artifice to defraud, said security and the use of the mails being described as follows:

2. The said defendants in the sale of stock of

Lucky Friday Extension Mining Company on or about August 8, 1945, at Spokane, in the Northern Division of the Eastern District of Washington, and within the jurisdiction of this court, did cause to be delivered by the mails of the United States according to the directions thereon, a certain letter addressed to Edwin Lavigne & Company, Radio Central Bldg., Spokane 8, Wash., the said letter having theretofore on or about August 7, 1945, been placed or caused to be placed by the said defendants in an authorized depository for mail matter to be sent or delivered by the Post Office establishment of the United States according to the directions thereon.

All of which acts of said defendants were against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided (Section 77(q), Title 15, U.S.C.A.).

Count V.

(Fraud in Sale of a Security—15-77(q))

1. The grand jury realleges all of the allegations of paragraph 1 of Count IV of this indictment.

2. The said defendants in the sale of stock of Pilot Silver-Lead Mines, Inc. on or about May 28, 1946, at Spokane, in the Northern Division of the Eastern District of Washington, and within the jurisdiction of this court, did cause to be delivered by the mails of the United States according to the directions thereon, a certain letter addressed to

E. J. Gibson & Co., 5 Wall St., Spokane, Wash., the said letter having theretofore on or about May 27, 1946, been placed or caused to be placed by the said defendants in an authorized depository for mail matter to be sent or delivered by the Post Office establishment of the United States according to the directions thereon.

All of which acts of said defendants were against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided (Section 77(q), Title 15, U.S.C.A.).

Count VI.

(Fraud in Sale of a Security—15-77(q))

1. The grand jury realleges all of the allegations of paragraph 1 of Count IV of this indictment.

2. The said defendants in the sale of stock of Pilot Silver-Lead Mines, Inc. on or about June 12, 1946, at Spokane in the Northern Division of the Eastern District of Washington, and within the jurisdiction of this court, did cause to be delivered by the mails of the United States according to the directions thereon, a certain letter addressed to Edwin LaVigne & Co., Radio Central Building, Spokane, Washington, the said letter having theretofore on or about June 8, 1946, been placed or caused to be placed by the said defendants in an authorized depository for mail matter to be sent or delivered by the Post Office establishment of the United States according to the directions thereon.

All of which acts of said defendants were against

the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided (Section 77(q), Title 15, U.S.C.A.).

Count VII.

(Conspiracy 18-88)

That prior to June 1, 1945, and continuing to the date of this indictment the defendants, James Anthony Allen, Francis Clayton Keane and Joseph Valentine Grismer, at Spokane, in the Northern Division of the Eastern District of Washington, and within the jurisdiction of this court, at Wallace, Idaho, and at divers other places to the grand jury unknown, did conspire, combine, confederate and agree with each other and with divers other persons whose identity is to the grand jurors unknown, to commit the following crimes and offenses against the United States: violations of Section 338, Title 18, U.S.C.A., of Section 77(q) of Title 15, U.S.C.A., and of Section 77(e) of Title 15, U.S.C.A., by using and intending to use the mails of the United States and means and instruments of transportation and communication in interstate commerce for the purpose of executing the device, scheme and artifice to defraud described in paragraph 1 of the first count of this indictment, which paragraph is here and now realleged, for the purpose of employing said device in the sale of securities, and for the purpose of selling and delivering after sale securities of Extension and Pilot at a time when no registration statements as required

by the Securities Act of 1933, as amended, were in effect as to such securities; and in furtherance of said conspiracy and to effect the objects thereof the defendants performed the following overt acts, among others, to-wit:

1. Caused letters dated August 8, 1945; August 13, 1945; August 23, 1945; August 30, 1945; September 12, 1945, and September 19, 1945, transmitting stock certificates of Extension to be sent through the mails from Wallace, Idaho, to E. J. Gibson & Co., 5 Wall Street, Spokane, Washington.

2. Caused letters dated August 6, 1945; August 8, 1945; August 11, 1945; August 22, 1945; August 24, 1945; August 30, 1945, and February 14, 1946, transmitting stock certificates of Extension to be sent through the mails from Wallace, Idaho, to Edwin Lavigne & Company, Radio Central Bldg., Spokane 8, Wash.

3. Caused letters dated May 23, 1946; May 22, 1946; May 25, 1946; May 25, 1946; May 27, 1946; May 29, 1946; June 5, 1946; June 6, 1946, and June 15, 1946, transmitting stock certificates of Pilot, to be sent through the mails from Wallace, Idaho, to E. J. Gibson & Co., 5 Wall Street, Spokane, Washington.

4. Caused letters dated May 24, 1946; May 29, 1946; June 7, 1946, and June 29, 1946, transmitting stock certificates of Pilot, to be sent through the mails from Wallace, Idaho, to Edwin Lavigne & Company, Radio Central Bldg., Spokane 8, Wash.

5. In July 1945, at Spokane, Washington, caused prospectuses of Extension to be delivered to E. J. Gibson & Co. and Edwin Lavigne & Company.

6. In May 1946, at Spokane, Washington, caused prospectuses of Pilot to be delivered to E. J. Gibson & Co., Edwin Lavigne & Company, and Ben Redfield.

7. On or about July 20, 1945, at Spokane, Washington, caused Extension to enter into an Underwriter's Agreement with E. J. Gibson & Co.

8. At Wallace, Idaho, on May 22, 1946, cashed a check drawn by E. J. Gibson & Co., dated May 20, 1946, in the amount of \$40,000 and payable to the order of Pilot Silver Lead Company.

9. At Wallace, Idaho, issued 200,000 shares of Extension stock to Elmer E. Johnston with the understanding that 100,000 shares would be turned back to Johnston to defendants.

10. At Wallace, Idaho, issued 150,000 shares of Pilot stock to James E. Gyde with the understanding that 125,000 shares would be turned back by Gyde to defendants.

11. At Wallace, Idaho, and Spokane, Washington, in July 1945 and thereafter directed Irene Vermillion to draw and sign various checks against the bank account of Extension payable to Delaware Mines Corporation, Montana Leasing Company, and Lexington Silver Mines and Lexington Silver Mines, Inc.

12. At Wallace, Idaho, and Spokane, Washington, in May 1946 and thereafter instructed Irene Vermillion to draw and sign various checks against the bank account of Pilot payable to Lexington Silver Mines, Lexington Silver Mines, Inc., Independence Lead Mines, Inc., Extension, and War Eagle Mining Co.

13. Beginning in 1945 defendant Allen sold large amounts of Extension stock through accounts at E. J. Gibson & Co. of Spokane, Washington, in the names of Helen Jorgenson, Helen Allen and James A. Allen.

All of which acts of said defendants were against the peace and dignity of the United States of America and contrary to the form, force and effect of the statute in such case made and provided (Section 88, Title 18, U.S.C.A.).

A True Bill.

E. D. HILSCHER,
Foreman.

HARVEY ERICKSON,
United States Attorney.

Presented to the Court by the Foreman of the Grand Jury, in open Court, in the presence of the Grand Jury and filed in the United States District Court for the Eastern District of Washington.

May 6, 1948.

A. A. LaFRAMBOISE,
Clerk.

[Title of Court and Cause.]

BOND

Know All Men by These Presents:

That we, James Anthony Allen, as Principal, and the General Casualty Company of America, as Surety, acknowledge and recognize ourselves jointly and severally bound and indebted to the United States of America in the penal sum of Two Thousand Dollars, (\$2,000.00), to be levied on our goods, chattels, lands and tenements, if default be made in the condition following, to-wit:

The Condition of the Above Obligation Is Such, That Whereas, an indictment has been returned by the Grand Jury in session at the District Court of the United States, for the Eastern District of Washington, Northern Division, against the said James Anthony Allen and filed with the Clerk of the above Court, charging a violation of Title 18 USCA, Sec. 338, Using the Mails to defraud. Fraud in sale of Securities, in violation of Title 15, USCA, Sec. 77(q) and Conspiracy to violate Sec. 338, Title 18, and Sec. 77(q), Title 15, in violation of Title 18, Sec. 88 USCA.

Now, Therefore, if the said James Anthony Allen shall appear before the United States District Court for the Eastern District of Washington at 10:00 a.m. on the first day of the next ensuing session of the said Court to be held at Spokane, Washington and from day to day thereafter as he is directed so to do, and shall hold himself subject and amenable

to the orders of the said District Court until finally discharged by said Court, then this obligation to become null and void, otherwise to remain in full force and effect.

JAMES ANTHONY ALLEN,
Principal.

GENERAL CASUALTY COM-
PANY OF AMERICA.

[Corporate Seal]

By WILLARD G. SWEANY,
Attorney in Fact.

Bond Approved as to Form:

HARVEY ERICKSON,
U. S. Attorney.

Bond Approved this 6th day of May, 1948.

SAM M. DRIVER,
Judge.

[Endorsed]: Filed May 6, 1948.

[Title of Court and Cause.]

BOND

Know All Men by These Presents:

That we, James A. Allen, as Principal, and the
National Automobile and Casualty Insurance Co.,

as Surety, acknowledge and recognize ourselves jointly and severally bound and indebted to the United States of America in the penal sum of Two Thousand (\$2000.00) Dollars to be levied on our chattels, lands and tenements, if default be made in the condition following, to-wit:

The Condition of the Above Obligation Is Such, That, Whereas, an indictment has been returned by the Grand Jury in session at the District Court of the United States, for the Eastern District of Wash., Northern Division, against the said James A. Allen and filed with the Clerk of the above Court, charging a violation of Title 18 USCA, Sec. 338, Using the Mails to defraud. Fraud in sale of Securities, in violation of Title 15, USCA, Sec. 77(q) and conspiracy to violate Section 338, Title 18 and Sec. 77(q) Title 15, in violation of Title 18, Sec. 88, USCA.

Now, Therefore, if the said James A. Allen shall appear before the United States District Court for the Eastern District of Washington at 10:00 a.m. on the first day of the next ensuing session of the said Court to be held at Spokane and from day to day thereafter as he is directed so to do, and shall hold himself subject and amenable to the orders of the said District Court until finally discharged by said Court, then this obligation to become null and

void, otherwise to remain in full force and effect.

This Bond is Void if in excess of \$2500.00.

This Bond is Void if issued after Aug. 5, 1949.

JAMES A. ALLEN,
Principal.

NATIONAL AUTOMOBILE
AND CASUALTY INSUR-
ANCE CO.

[Corporate Seal]

By JOSEPH JOBLIN,
Attorney in Fact.

Bond Approved as to Form:

HARVEY ERICKSON,
U. S. Attorney.

Bond Approved this 9th day of May, 1949.

SAM M. DRIVER,
Judge.

Filed May 9, 1949.

[Title of Court and Cause.]

MOTION TO DISMISS OF DEFENDANT
JAMES ANTHONY ALLEN

The defendant James Anthony Allen moves the court to dismiss Count VII of the indictment herein on the following grounds:

1. That this indictment is bad for duplicity in that it charges in a single count a conspiracy to commit more than one offense; to wit, the offenses

denounced by Section 338, Title 18, U.S.C.A.; Section 77(q) of Title 15, U.S.C.A.; and Section 77(e) of Title 15, U.S.C.A.

2. That the setting up of more than one offense in a single count does not enable the court or the jury to deal intelligently with the charge, and seriously handicaps the defendant in making his defense and prevents him from properly, fairly, or legally defending; that said count does not apprise this defendant of the nature of the charge against him particularly because the charge of crime collectively included in said Count VII and being 77(e) of Title 15, U.S.C.A., is indistinct and ambiguous because no substantive charge of the violation of said statute is set out anywhere in the indictment and it is impossible in any fashion whatsoever to determine any connection with the various crimes alleged in said Count VII and the overt acts set out therein.

3. That the said Count VII of the indictment does not state facts sufficient to constitute a crime against the United States.

Lemon v. U. S., 164 Fed. 953.

R. MAX ETTER,
WILLIAM E. CULLEN,
Attorneys for Defendant,
James Anthony Allen.

Copy received this 20th day of August, 1948.

HARVEY ERICKSON,
Attorney for Plaintiff.

Filed Aug. 20, 1948.

[Title of Court and Cause.]

MOTION FOR BILL OF PARTICULARS

Comes Now the above named defendant Francis Clayton Keane and moves this honorable court for an order directing plaintiff to file a bill of particulars of the following matters:

1. As to paragraph 1 of counts I, II, III, IV, V, VI and the first paragraph of count VII, what pretenses, representations and promises were made by defendants, and who made them, and to whom they were made, and when they were made, and whether they were oral or in writing, and wherein the same were false and fraudulent.

2. As to Paragraph 1 of counts I, II, III, IV, V, VI and the first paragraph of count VII, when and where the defendants devised and intended to devise the device, scheme and artifice.

3. As to Paragraph 1 of counts I, II, III, IV, V, VI and the first paragraph of count VII, the names and addresses of the "investors" whom plaintiff intends to use as witnesses in the trial of this action.

4. As to Paragraph 1 of counts I, II, III, IV, V, VI and the first paragraph of count VII, how much stock of Extension and Pilot were issued to Emer E. Johnston of Spokane, Washington, and James E. Gyde of Wallace, Idaho, and how much of such stock or proceeds from its sale was turned

back to defendants, and what amounts to each of them.

5. As to Paragraph 1 of counts I, II, III, IV, V, VI and the first paragraph of count VII, the amount of funds of Extension and of Pilot which had been appropriated and diverted to defendants' own use and benefit, and how much thereof to each of said defendants.

6. As to Paragraph 2 of counts I, II, III, IV, V and VI, copies of letters therein described.

7. As to the first paragraph of count VII, when and where each defendant became a party to said conspiracy.

8. As to the first paragraph of count VII, the names and addresses of the persons to whom securities of Extension and Pilot were sold and delivered by defendants and the amount thereof.

9. As to Paragraphs 1, 2, 3, and 4 of count VII, copies of the letters therein described.

10. As to Paragraphs 5 and 6 of count VII, copies of the prospectuses therein mentioned.

11. As to Paragraph 7 of count VII, a copy of the Underwriter's Agreement therein mentioned.

12. As to Paragraph 9 of count VII, the amount of stock therein described received by each defendant.

13. As to Paragraph 10 of count VII, the amount of stock therein described received by each defendant.

14. As to Paragraph 11 of count VII, when defendants directed Irene Vermillion to draw and sign checks and which defendants directed her so to do, the number of said checks and the amount of each and to whom each is payable.

15. As to Paragraph 12 of count VII, when defendants directed Irene Vermillion to draw and sign checks and which defendants directed her so to do, the number of said checks and the amount of each and to whom each is payable.

16. As to Paragraph 13 of count VII, the amount of Extension stock sold by defendant Allen and when said sales were made.

The ground of this motion is that the above matters are not averred with sufficient definiteness or particularity to enable defendant to be apprised of the nature of the charges made against him or properly to prepare for trial.

Dated: August 23rd, 1948.

H. E. T. HERMAN,

RICHARD S. MUNTER,

Residing at Spokane, Wash.,

EUGENE F. McCANN,

Residing at Wallace, Idaho,

W. E. SULLIVAN,

W. H. LANGROISE,

Residing at Boise, Idaho,

Attorneys for Defendant,

Francis Clayton Keane.

Filed Aug. 23, 1948.

[Title of Court.]

CLERK'S MEMORANDUMS OF
MONDAY, AUGUST 23, 1948

Court Convened Pursuant to Adjournment,
at 10:00 A.M.

Present: Honorable Sam M. Driver, U. S. District Judge; A. A. LaFramboise, Clerk; Stanley D. Taylor, Court Reporter; Harvey Erickson, U. S. Attorney; Frank R. Freeman, Assistant U. S. Attorney; R. R. Isaacs and Elwyn L. Daniel, Deputy U. S. Marshals, and Sidney G. Swain and Ray E. Kurtz, Probation Officers.

Proceedings

* * * *

[Title of Cause.]

HEARING ON MOTIONS AND
ARRAIGNMENTS

Now on this 23d day of August, 1948, Motion to Dismiss of defendant James Anthony Allen, argued by R. Max Etter for the defendant and by Harvey Erickson and Donald J. Stocking for plaintiff. Motion to Dismiss Denied.

Motion to Dismiss, Motion to Strike, and Motion to Make More Definite and Certain of defendant Keane argued by Eugene F. McCann for defendant and by Harvey Erickson and Donald J. Stocking

for the plaintiff. Motions to Dismiss and to Strike Denied.

Motion to dismiss of defendant Joseph Valentine Grismer, argued by William S. Hawkins for defendant and by Harvey Erickson and Donald J. Stocking for the plaintiff. Motion to Dismiss Denied.

Mr. Etter on behalf of defendant Allen and Mr. Hawkins on behalf of defendant Grismer orally moved to make More Definite and Certain by adopting the motion of Defendant Keane to Make More Definite and Certain. Said motion as to all three defendants taken under advisement except that Mr. Erickson agreed to furnish copy of letter mentioned in the counts of the Indictment and in the overt acts.

James Anthony Allen

Now on this 23d day of August, 1948, into court comes the defendant James Anthony Allen with his attorney R. Max Etter, waives formal arraignment under the Indictment filed against him and being interrogated by the Court as to his plea thereto, answers that he desires to enter a plea of Not Guilty as to all counts, which plea is received by the Court and ordered entered on the records of the court.

Francis Clayton Keane

Now on this 23d day of August, 1948, into court comes the defendant Francis Clayton Keane with his attorney Wm. S. Langroise, waives formal arraignment under the Indictment filed against him and being interrogated by the Court as to his plea thereto, answers that he desires to enter a plea of

Not Guilty as to all counts, which plea is received by the Court and ordered entered on the records of the court.

Joseph Valentine Grismer

Now on this 23d day of August, 1948, into court comes the defendant Joseph Valentine Grismer with his attorney William S. Hawkins, waives formal arraignment under the Indictment filed against him, and being interrogated by the Court as to his plea thereto, answered that he desired to enter a plea of Not Guilty, which plea was received by the Court and ordered entered on the records of the court.

* * * *

(Thereupon Court adjourned until Monday,
September 13, 1948, at 10 a.m.)

[Title of Court and Cause.]

ORDER

This matter coming on regularly to be heard this 23rd day of August, 1948 upon the defendant's, Francis Clayton Keane, motion for Bill of Particulars, which said motion was adopted in open court by the other two defendants, and the court having heard the argument of attorneys for defendant Francis Clayton Keane and the argument presented by the attorneys for the United States, and having examined the records and files in the action

and being fully advised as to the law and in the premises;

Now Therefore, It Is Hereby Ordered and this does order that the plaintiff inform the defendant, by Bill of Particulars, what, if any, deceptive, misleading, false and fraudulent pretenses, misrepresentations and promises, other than those specifically enumerated in Paragraph 1 of Count I of the Indictment, were made by the defendant as a means of defrauding purchasers of stock of Extension and Pilot.

It Is Further Ordered and this does order that the plaintiff furnish to the defendants copies of the letters described in Paragraph 2 of Counts I, II, III, IV, V and VI and that the plaintiff furnish to the defendants copies of the letters described in Paragraphs 1, 2, 3 and 4 of Count VII of the Indictment. In all other respects said motion for a Bill of Particulars is denied.

Dated this 16th day of September, 1948.

SAM M. DRIVER,

United States District Judge.

[Endorsed]: Filed Sept. 16, 1948.

[Title of Court and Cause.]

BILL OF PARTICULARS

Comes now the plaintiff, United States of America, by Harvey Erickson, United States Attorney for the Eastern District of Washington, and Donald J. Stocking, Special Assistant to the United States

Attorney, and in compliance with the Court's Order of September 16, 1948, gives the following Bill of Particulars:

1. Plaintiff informs the defendants, in conformity with the first paragraph of the Court's order, that there are no deceptive, misleading, false and fraudulent pretenses, misrepresentations and promises, other than those specifically enumerated in the indictment.

2. That the attached photostatic copies of letters are furnished in compliance with the second paragraph of the Court's order and are the letters described in Counts I, II, III, IV, V, and VI and the letters described in paragraphs 1, 2, 3 and 4 of Count VII of the Indictment.

HARVEY ERICKSON,
United States Attorney.

DON R. STOCKING,
Special Assistant to the
United States Attorney.

Copy received this 24th day of September, 1948.

WM. E. CULLEN,
One of Attorneys for
Defendant Allen.

Copy received this 24th day of September, 1948.

RICHARD S. MUNTER,
Attorney for Defendant
Keane.

[Endorsed]: Filed Sept. 24, 1948.

[Title of Court and Cause.]

STATEMENTS ON WITHDRAWAL OF PLEA
OF NOT GUILTY AND SUBSTITUTION
OF PLEAS OF NOLO CONTENDERE

(Defendant Keane)

Spokane, Washington, December 8, 1948.

Before: Honorable Sam M. Driver,
United States District Judge.

Defendant Francis Clayton Keane appears personally and by his counsel, Richard M. Hunter and Henry E. T. Herman of Spokane, Washington, Eugene F. McCann of Wallace, Idaho, and William Langroise of Boise, Idaho.

Defendant Allen was present in the courtroom with his attorney, William Cullan of Spokane, Washington. Defendant Grismer was present in the courtroom with his attorney, Mr. Hawkins, of Coeur d'Alene, Idaho.

Mr. Herman: If Your Honor please, at this time the defendant Keane moves the Court for leave to substitute the plea of nolo contendere for the plea of not guilty heretofore entered. This, your Honor, is done for three reasons which I shall state very very briefly. First, his counsel, as officers of the court, feel that in the interests of the furtherance of justice, Mr. Keane should at the time of this trial make a full and complete disclosure without the hazard of possible conviction. In the second place, his counsel believe from information

which they think is reliable, that the physical condition of Mr. Keane at the time of the commission of the alleged offenses was such as to raise some doubt in the mind of counsel as to whether or no he was in a physical and mental condition where he could entertain the necessary intent, which is an element of the offense here charged, and for the further reason that his physical condition was such as to make it impossible for him to resist certain demands and suggestions made by others who we believe controlled his actions. In the third place, Mr. Keane's counsel believe that while Congress has vested your Honor with wide discretion in the imposition of punishment in the case of a finding of guilty or in the case of a plea of guilty or in a plea of *nolo contendere*, and that the punishment with which your Honor can impose is the same in all of these particular cases, whether the guilt be established by a plea, by a verdict of the jury, or whether there be no contest and the plea of *nolo contendere* be entered, in all those cases your Honor has a right, as I have said, to impose a very wide latitude of punishment.

On the other hand, we do not believe that Congress ever intended that the punishment for this particular crime should be so drastic as would be the punishment of disbarment, which in the case of the state of Idaho is a necessity in the event of a plea of guilty to a felony. In other words, as far as the State of Idaho is concerned, the authorities would have absolutely no alternative other than to disbar

in the event of a finding of guilt by the jury or in the event of a plea of guilty, but in the event of any action under *nolo contendere* it would not be, under the authorities that we have investigated and found on closer search, would not be considered as a conviction, and would in nowise affect the proceedings, and the authorities charged with determining whether or not Mr. Keane could continue with the practice of law would have a right to and it would be their duty to consider all the extenuating circumstances which would be shown if under a plea of *nolo contendere* Mr. Keane were to take the stand. Mr. Langroise, the chief counsel, has a statement of facts; he is more familiar with them than either Mr. Munter or I, and I think it would be helpful to your Honor if he made that statement.

The Court: Go ahead, Mr. Langroise.

Mr. Langroise: Please your Honor, it is with some degree of feeling, perhaps, the presentation I may make, because of the relationship in the past and present between myself and the defendant Mr. Keane. I merely mention that so that your Honor will perhaps bear with me in that particular. Mr. Keane and I attended law school together, and have been acquainted ever since he finished law school in 1920. I would like just to very briefly touch upon the physical condition of the defendant Keane, coming along in the early part of 1940. He was not attending to his practice of law. He was during that period using liquor excessively, and in various times which I saw him throughout that period, I found

him not able to intelligently and in some instances to at all discuss any matter with any degree of continuity or reason.

This condition continued along on and on until in the end of—even into 1947. Along after, or after we got into this matter, Mr. Keane was taken to a hospital for examination, and it was found then that it was not entirely a habit of whiskey that had brought about his condition, but the doctors further found and reported to us that it was a result, in part, of malnutrition. Since he went to the hospital and has taken the treatments which the doctors have prescribed to try to build back his physical condition, there has been a great change, and there has been a complete rehabilitation, and since that time he is able to carry on and engage in the practice of law as we knew him throughout the many years in which many of us at the bar of Idaho had the pleasure either to be associated with him or to be opposed against him in cases that were being tried.

Along in 1943, somewhere along in the summer of that year, this defendant together with the defendant Allen entered into some type of partnership, which in its first instance had to do with what I think is commonly referred to as the Montana Leasing Company, a property over in Montana which they attempted to operate and attempted to finance. During the course of that operation, and I say again, during all of this time, from some things which I saw myself and some things which I have found from others who I have a great deal of confi-

dence in, Keane was continuing his drinking and was in substantially the same condition which I have described; he had no way of being able to do anything, but during the course of this there were two properties or promotions, and these two promotions, as a result of them there were certain promotions of stock received by the partnership, and certain of those promotion stocks were sold and the funds, some of which went into the Montana Leasing Company, others of which we have never been able to discern or find where they went.

At any rate, carrying it on into the time this investigation was made and after we were able to get Mr. Keane in the condition where we could talk to him, we found these facts, and Keane immediately then started to pursue a course of trying to secure for the benefit of these companies and the creditors of this partnership any assets which the partnership had. In June of 1947 a suit was filed by Mr. Keane against Mr. Allen and others, setting up all of these various transactions as best they could be set up, and for the purpose of trying to marshal whatever assets the partnership had or was entitled to, for the purpose of making repayment of monies borrowed from these various companies, and set up the various contributions as best he could, and set up that the various funds had come out, and Allen owed to the partnership, and seeking recovery, and asking for a receivership for the purpose of marshaling these assets and trying to get them together so it would be possible to make restitution of the borrowed money from these various companies.

On this a notice was had for hearing on the application and petition for appointment of a receiver. There was a continuance, one, I believe, and two, but as a result of it, there was a conference between attorneys representing Mr. Allen and the attorneys representing Mr. Keane. From an examination of these pleadings, and I'm referring to what are matters of court record in Idaho, and I have copies if your care to have them, Keane set up that all of the monies he had had been contributed to this partnership, and all the stock that he had was about 200,000 shares of Pilot, that was all he had, that he had no assets and had none of the funds. Well, as a result of that conference and a number of conferences, an agreement was entered into between Mr. Keane and Mr. Allen. One of the things was—and also a settlement with Independence for monies due Independence. The stocks which went in to make this settlement came from Allen. Keane had none, and had had none, and I think the complaint shows that in the last of 1946 that all of the books, records, and corporate records, and the control of all these corporations, was taken over by Allen and his associates.

In this agreement it was agreed that Keane would contribute this 100,000 shares of Pilot that he had in his possession, and that it was to go into a trust. A good many hundreds of thousands of other shares of stock was to go into this trust. This trust was set up for the purpose of liquidating the obligations of the Pilot and the Lucky Friday Extension; The

trustees, Mr. Therrett Towles of this city, Mr. Eugene McCann, and Mr. Randall, an accountant, a C.P.A., of Wallace. Certain things were to be done, and as a result of that there have been numerous suits filed involving different companies, different things; they were to be dismissed; all of those suits were to be dismissed. They were dismissed, including the one Keane brought in June, 1947, upon certain representations that certain funds would be available for making restitution or returning capital, and so forth, so that they could continue the operations of and complete restitution or return of the money be made to these properties. Also representations were made as to a certain set of conditions as to the brokers' contracts with brokers and others whereby money was to be obtained for the development of these various other companies, including the Coeur d'Alene Mines Consolidated, which was considered a very promising company; they had a contract with the Coeur d'Alene Mines for development of some four different groups of properties at the 2700 foot level.

None of these monies that Allen said would be put in, or any of the listing of the stocks or the registrations or the brokerage of them or anything else was done. It continued on and it was left just in its status quo, and some of the stocks in the Pilot and in the Lucky Friday Extension that were in the treasury were removed from the treasury, so it was alleged in our subsequent motion and affidavit in support of it, by Mr. Allen, and put on the market

until all of the stocks were a dredge on the market; there was no chance for the trust to do anything, so along in April, 1948, Mr. Keane made a motion to set aside the judgment of dismissal that had heretofore been entered in the action which had originally been instituted in June, 1947, and in support of that motion, set up in the affidavit various things as to the failure of this and other things which were fraud, as we saw it. This motion was set down for hearing, was heard, and was by the District Court of Shoshone County granted, and was by the defendant Allen and others appealed to the Supreme Court of Idaho, where it is now pending.

I merely mention this, if your Honor please, for the purpose of indicating to you that anything that has been done or any effort that has been made to accomplish any return of the monies borrowed from these various companies has been the result of the actions of the defendant Keane; that he and he alone has been forcing and is still trying to force an accomplishment of that fact. I think, if your Honor please, if you care to examine, I have attached all of these papers, the ones I have referred to, which will give a pretty clear picture of those things during that period.

The Court: I don't care to see them. Mr. Erickson.

Mr. Erickson: Please the Court, I do not wish to urge the Court to accept or to reject a plea of nolo contendere. I take it that that's the decision that the Court must make. I wish to join in what

Mr. Langroise has said about Mr. Keane's cooperation. Mr. Keane came into the grand jury room and told a story which I thought was straightforward and above board, to the grand jurors. He's done, I'll grant that he's done, everything he can within the past year, or whenever it is, to make restitution, but I do think that I should tell the Court some of the more serious aspects of this case.

In the first place, this started in 1945 by the organization of the Lucky Friday Extension Mining Company in Idaho. It was a mining proposition in the Coeur d'Alene mining district. Now, it happens that the defendant Allen was enjoined in 1943 and could not be a promoter and no securities could be sold of any company of which he was an officer. The prospectus of the Lucky Friday Extension Mining Company listed the promoters as Grismer, who is a defendant in this case, and William Ellsworth Mullan, and Evans. The evidence will show that Mullan and Evans were merely dummy incorporators for Keane and Allen. Keane and Allen were the real people behind this Lucky Friday Extension Mining Company. They issued 350,000 shares, at 10 cents par value, and there was a public offering made to the brokers. The total receipts were \$178,000, and Keane and Allen embezzled \$123,000 of that amount. The embezzlements were crude and flagrant, and one of the most notorious cases of embezzlement that's ever come to my attention. They took this money and diverted it and

used it for drinking, for gambling. We have personal checks that they cashed at hotels, one check is made out \$600.00 and some dollars to a jitterbug, signed in feminine handwriting; and some of it was used in other Montana mines that these people had interests in. \$28,250.00 was restored, and \$94,750.00 is the net amount of the embezzlement which hasn't been restored at this time.

The Court: How much was restored, did you say?

Mr. Erickson: \$28,250.00, so there's a shortage of \$94,750.00, is the net amount of the embezzlement on that case.

Now, to make matters worse, there was a bull market in mining stocks about the latter part of 1945 and the early part of 1946, so there was a second offering made to the public through brokers of 300,000 shares, and that time they raised the price from 12½ to 32½ cents per share, and there was such a market on that the public went for the second issue, and the brokers couldn't get enough, but when the second offering was made Keane and Allen and Grismer knew that they had already embezzled most of the money they got the first time from brokers, but they didn't disclose that, and went right on increasing their operations on the second offering.

Then they came in spring of 1946 to Pilot Silver Lead, which was the other company, and this company was organized by Keane, Allen and Grismer. Keane became president and Grismer the

manager, and Allen did not appear of record. He couldn't, because he had been enjoined, and the same proposition prevailed here. 3,500,000 shares were issued at 10 cents par value, and then they were given stock for legal services in both of these companies, to James Gide and to Elmer Johnston, 200,000 shares for legal service, 150,000 to James Gide, of which most of that was kicked back, and then the stock to Elmer Johnston was kicked back by Elmer Johnston back to the company. Mr. Stocking can give you the exact shares on those kickbacks, but they were a fraud on the public, because the prospectus didn't disclose accurately the amount of stock that was going for attorney's fees, and out of the stock on Pilot Silver Lead there were \$213,500.00 realized, and the net embezzlement on that was \$75,335.00; \$15,165.00 was restored, so that the total embezzlements by these defendants was \$213,500.00, of which \$170,085.00 is still owing and of which restitution has not been made, and that in fact is the brief picture here of the amount involved, and the public, of course, were the victims, and I'm presenting these facts as near as I can, and Mr. Stocking, who has the details, can elaborate more on them.

The Court: Mr. Stocking.

Mr. Stocking: If the Court please, Mr. Erickson has given the outline of the general fraud that's alleged in this indictment. As the Court knows, there's three counts in the indictment based upon a charge of mail fraud, upon a charge of fraud in

the sale of these securities, and one upon a charge of conspiring to violate both the mail fraud and the fraud section of the Securities Act, and also a charge of conspiracy to violate the registration provisions of the Securities Act, and that comes in connection with the Allen injunction which Mr. Erickson mentioned. It did not prevent the sale of Securities in which Mr. Allen would be a promoter if they had gone through registration, but there was a three year limitation against an offering coming within the Class A registration. That injunction took place in Seattle in June, 1943. Both of these offerings were commenced before June of 1946, so they were both in that three year period, and that was one reason, and the government's contention, that Allen's name does not appear in either of these prospectuses. These were sold out by legitimate brokers, these offerings, in a legitimate operation, and the fraud, of course, comes in the fact that they didn't use the money as they said they were going to use it for the benefit of these companies.

In the first offering, out of the \$178,000.00 that Extension got from its two offerings, one in June, 1945 and one in January, 1946, approximately \$80,000.00 was used in connection with the corporation's legitimate activities. The Extension Company had entered into a contract with what we refer to as the Big Friday, it's the Lucky Friday Mining Company, and it's a well established mining company there near Mullan. Its ground adjoins this of the Lucky Friday Extension. The arrangement had

been made for the Extension to put up money and sink farther on their shaft, and then go from their workings over into the Extension grounds. Joe Grismer was in charge of the operation up there, and this \$80,000.00 was spent under his direction in attempting to do this mining, but as he pointed out, as Mr. Erickson pointed out, at the time they made the second offering, and after they had made this showing and the public knew that they were actually sinking the shaft and coming along with that work, and the stock had jumped up to a market of around 30 cents a share, then they came out with this offering of 32½ cents a share, and at that time the figures show that they had already diverted out of this first \$100,000 they had received from the brokers, \$49,000 to their Montana Leasing Company, \$10,000 to the Delaware Mining Company, which was a corporation which all three of these defendants were interested in, and only \$29,000 had actually been spent at that point on the work in the Big Friday mine. At the end of the year of 1945 that figure of diversion was \$42,000.00. The actual offering came about January 7, 1946, and by that time they had diverted an additional \$7,000.00.

The Pilot Company then was formed, and the diversion there took place much faster. The money came in almost immediately from the underwriters, and by September 12 of 1946, you see the offer was made at the end of May, 1946; the money came in the first part of June, 1946; by September 12, 1946, they actually had a small deficit in the Pilot bank

account, and in the first three months they had taken out for their own purposes to divert to these companies in which they were interested, and in which Pilot had no interest, of course, 94 or \$95,000 of the original \$100,000.00. Some of this money then, as Mr. Erickson has pointed out, they put back into the Pilot company, and some of the money they put back into the Extension Company to meet the payrolls and keep the companies going, but the thing blew up on them about November, 1946, when they ran out of money in both the Pilot and the Extension, and they had no way to carry on any kind of mining operations, so that the net result to the stockholders, of course, was that they had lost all of their money. They still have these properties up there, and we're not contending anything about the merits or demerits of these properties. From what we've been told, both of these propositions had merit, and if the money had gone into them they may have proved very successful.

Now, the defendant Keane had told us that at the outset, when these monies were coming in from the Extension and were taken from the Extension for the use of the Montana Leasing Company, which he claims is a partnership between Keane and Allen, that they intended through the sale of their promotion stock to put this money back. They were taking quite large amounts of promotion stock, most of it in the name of defendant Grismer, and they intended through the sale of that promotion stock to pay, to repay these loans, if you want to call them

loans, or these diversions, but the fact is that very little of the money that came from the sale of the promotion stock ever found its way back into these two companies, and it just became a case of their running short of money and having to promote the Pilot to continue operations, then they gave some of the Pilot Money to Extension.

The diversions were as follows: From Extension, \$113,000 to the Montana Leasing Company or Lexington Silver Lead Mines, Inc., its successor, those diversions taking place between July 28, 1948, and May 17, 1946; from Extension, \$10,000.00 to Delaware Mines Corporation on August 7, 1945. That takes care of the diversions from Extension. From Pilot, \$61,300.00 to the Lexington Silver Lead Mines, Inc., which was the successor of their Montana Leasing Company; \$15,000.00 to Coeur d'Alene Consolidated Silver-Lead Mines, Inc.;—

The Court: Mr. Stocking, unless you wish to do so, it isn't necessary to go into detail on these diversions, if you just want to tell me the totals of them.

Mr. Stocking: Well, I think the totals have already been related, \$178,000.00 was the total taken in by Extension, and the total diversions from Pilot and Extension amounted to \$213,500, of which \$170,085.00 is still owing. The only other things that I thought I might mention here to the Court for consideration at this time would be the fact that Keane has cooperated with the government, as Mr. Erickson has stated. Now, in connection with that

cooperation it should be pointed out that the government's case in this is built up very largely on paper records, checks, bank statements, and things such as that. All of these records were in Keane's hands at the time our investigation started, and eventually all of these records have been turned over to the government. I make that point because it has been our experience in some cases where vital records have been destroyed, and of course when a case is based on records, why, it affects the government's ability to prove a case beyond reasonable doubt to the satisfaction of the jury. Keane has made those records available to the government. The only other thing that I might mention would be that I have found out in talking to people in the vicinity of Wallace and Kellogg and Northern Idaho that the defendant Keane is very well thought of in his community. He has practiced law up there for some time, and has borne a good reputation. He's had no other convictions or difficulty.

The Court: I was just going to ask that question: I had assumed it was true that he has no prior, at least felony convictions.

Mr. Stocking: That is correct. I don't know of any other information. If there's any breakdown of any of these figures that are required, we have Mr. Denny, the Commission's accountant, here, and he'll be able to outline the charge.

The Court: I think that's sufficient information so far as the circumstances of the case are concerned. Anything further?

Mr. Munter: I might just add, as an officer of

this Court, and representing the defendant Keane, that I have personally had an acquaintance with Mr. Keane for more than fifteen years, have been associated in causes with him in both the state courts here and in Idaho and in the Federal courts, and I think what Mr. Stocking has just said is entirely true, he does have the respect and regard of the community in which he lives.

It seems to me the problem before your Honor this morning presented by our request for permission to change plea goes to the question of whether the circumstances here, taking into consideration the matters which the government counsel have so fairly presented to your Honor and the circumstances of this particular defendant of being a practicing lawyer, unfamiliar with any other avocation or vocation of any kind, if such a plea is permitted by your Honor the effect of it, of course, will not be to in any way limit the punishment which your Honor can give to the defendant under such a plea. The understanding of all counsel, and I think that is your Honor's opinion of the law, is that the Court would then be free to in other words give such penalty as the Court saw fit within the same limits that the Court would be limited by a plea of guilty or a conviction.

It seems to me that the matter which is now presented to your Honor then goes solely to the question of whether under these circumstances and the frankness and the honorableness of this man, which immediately showed itself once he got from

under the curse of this condition of habitual drunkenness, that his character immediately showed in his placing at the disposal of the government these records, rather than that of the mind which is actually criminal, which would naturally destroy and do away with and perhaps have made even impossible successful prosecution here, and then the further matters which my associate, Mr. Langroise, brought to your Honor's attention of the genuine bona fide effort which is requiring time and substance of Mr. Keane to carry on this litigation which is now in the Supreme Court of Idaho to attempt to secure restitution here from the ones he thinks are in a position to make restitution of the things which were taken, because it's perfectly obvious to your Honor that while there's been a suggestion here of amounts used for cashing checks at various hotels and things of that kind, that this money hasn't all been lost. It's just as evident that it is not within the power of Mr. Keane to make restitution unless he can secure that money from the places where it now is, and he has carried on that litigation for that purpose.

It seems to we who are addressing this motion which is addressed to the discretion of the Court, that here is presented a case where, as in the case of any professional man, there would automatically follow a punishment far greater than the Congress itself has established for the offense under circumstances where a man who has heretofore conducted himself now finds himself in middle age and without

any means of livelihood other than his profession; that he is addressing himself to the Court for the purpose of being able to continue at such time as he has paid such penalties as your Honor might inflict in his professional career, subject only to meeting the question of whether he actually has been guilty of moral turpitude to such an extent that he should not be allowed to continue, and a conviction here automatically, either upon a plea of guilty or a finding of the jury, would remove from him that possibility of showing the circumstances of the case, therefore we respectfully submit to your Honor that under the showing here made, this plea should be entertained by your Honor.

The Court: It's been the practice of this Court and I think of most Courts to limit the rather exceptional and extraordinary plea of *nolo contendere* to those cases involving corporations or a violation of regulatory laws, where there isn't the matter of moral turpitude involved, but obviously it wasn't the intent of Congress to strictly limit the acceptance of the plea to those cases, because it hasn't been limited by legislation, and the Court has in its discretion in this particular case to accept or reject the plea when it is proper.

As Mr. Munter has pointed out, this hearing has nothing to do with the punishment that may finally be imposed upon the defendant Krane should *be* the plea be accepted. As he's stated, it's the understanding of the Court that upon the acceptance of the plea and the finding of guilty upon the facts as presented, the Court may then impose an

identical punishment on the same authority and may act within the same limitation as after a verdict of a jury or a plea of guilty, so that here it's just a question now of whether the plea should be accepted.

I think it should be sparingly employed, and I want to say that I would not consider it in a case of this kind where there are not exceptional circumstances presented, but here, without detailing the circumstances which have been stated this morning, we have a lawyer, a member of a learned profession, who has reached middle age, fifty years of age, I understand, with a good reputation and no prior conviction. During the time of the commission of the offense charged he was drinking heavily and continuously, and if he should plead guilty or be found guilty, as I understand the laws of Idaho, his disbarment would follow necessarily as a result of that conviction, whereas if a plea of *nolo contendere* is accepted, then the matter of whether or not he shall be disbarred rests within the discretion of the Board of Bar Examiners or whatever agency passes on that matter in the state of Idaho, and they may or may not disbar him, depending upon the circumstances of his offense as they may be presented, so that just to put it baldly and shortly, I think that under these circumstances the man is entitled to a chance to avoid disbarment if he can, and as has been intimated here, the disbarment of a professional man of his age just practically destroys the individual so far as his usefulness to

society is concerned, and I want to say that it's not because this man is a lawyer, but because he's a professional man, that I'm inclined to accept this plea. I would regard it in the same way under similar circumstances if a dentist or a physician or a member of any learned profession were involved where the depriving of the right to continue practicing his profession would have such a disastrous effect.

The court will grant the motion for leave to change the plea of the defendant Francis Clayton Keane from not guilty to *nolo contendere*. Now, what was your plan, gentlemen, with reference to entering formally the plea of *nolo contendere*? The court has merely indicated he would accept it.

Mr. Herman: With your Honor's permission, the defendant Keane is present in court, and will proceed so to do.

The Court: All right.

Mr. Herman: We will waive the reading of the indictment.

The Court: You're familiar with the various counts of the indictment, Mr. Keane?

Defendant Keane: I am, your Honor.

The Court: And being an attorney, I deem it unnecessary to explain to you further than I have already done, the matter of the effect of the plea of *nolo contendere*. You understand that?

Defendant Keane: I understand, your Honor.

The Court: And what, then, is your plea to this indictment?

Defendant Keane: *Nolo contendere*.

The Court: To each of the seven counts of the indictment?

Defendant Keane: Yes, to all of the counts of the indictment.

The Court: I think that the Court indicated he would permit withdrawal; I think I should formally find that you have withdrawn your prior plea of not guilty.

Defendant Keane: Yes.

The Court: And that you now substitute therefor a plea of *nolo contendere* to each of the counts of the indictment.

Defendant Keane: That's correct.

The Court: Let the record so show. The Court thinks it would be advisable to defer sentence in this case until after the trial of the case in order that I may get the benefit of the disclosures made in the presentation of the testimony, and in the meantime I will ask the probation officer to prepare for me a presentence investigation and report, and make a report to the court. Is there anything further, then? The court will adjourn until Friday morning at 10 o'clock.

Reporter's Certificate

United States of America,
Eastern District of Washington—ss.

I, Stanley D. Taylor, do hereby certify:

That I am the duly appointed, qualified and acting official court reporter of the United States Dis-

trict Court, Eastern District of Washington. That as such reporter I reported in shorthand and transcribed the foregoing proceedings had before the Honorable Sam M. Driver, United States District Judge, at Spokane, Washington, on December 8, 1948.

That the within and foregoing is a true, accurate and complete transcript of the proceedings had therein.

Dated this 9th day of December, 1948.

STANLEY D. TAYLOR,
Official Court Reporter.

[Endorsed]. Filed Dec. 10, 1948.

[Title of Court and Cause.]

PROCEEDINGS ON WITHDRAWAL OF PLEA
OF NOT GUILTY AND SUBSTITUTION
OF PLEA OF NOLO CONTENDERE.

(Defendant Grismer.)

Spokane, Washington, January 12, 1949.

Honorable Sam M. Driver, United States District Judge.

Harvey Erickson, United States Attorney, and Frank R. Freeman, Assistant United States Attorney, appearing for the plaintiff.

William S. Hawkins, appearing for the defendant Grismer.

Mr. Hawkins: Your Honor please, the defend-

ant would like at this time to ask permission of the Court to withdraw his plea of not guilty to the counts which are on file here, and tender a plea of nolo contendere to the conspiracy count.

The Court: Very well. Mr. Erickson?

Mr. Erickson: If it please the Court, if a plea of nolo contendere is tendered to count 7, I wish after a brief statement of the case, if the Court should accept the plea of nolo contendere on count 7, to dismiss counts 1 to 6 inclusive.

The Court: Count 7 is the conspiracy count, and counts 1 to 6 inclusive are the substantive counts, isn't that correct?

Mr. Erickson: Yes, but the dismissal only as to the defendant Grismer on the other counts.

The Court: Yes, I understand that. I might say for the record here that this matter has been discussed in chambers in a conference in which counsel for the defendant and the government were present, and the representatives of the Securities and Exchange Commission, and the matter was discussed in considerable detail, so that you need only briefly state your reasons here, Mr. Erickson, for making this motion.

Mr. Erickson: I make this motion to give the Court some of the facts in connection with Grismer's participation, just very briefly. In the first place, in the first company that was promoted, the Lucky Friday Extension Mining Company, Grismer was the president of the company, and his only compensation was a salary of \$200.00 per month. He never participated, he never got anything except his sal-

ary; of all the monies that were raised for this company he only received a salary. As to the second company, the Pilot Extension, he was the foreman in charge of the operations there; he put up the mining claims, and he only was compensated for his actual work there, and they still owe him some salary for the work he did on the Pilot Silver.

The Court: Well, it's my understanding that he rendered service for whatever pay he got, or salary.

Mr. Erickson: Yes, he was actually on the job and rendered services for that. He had owned these mining claims for a period of years, and deeded these mining claims to the company, so that he's out his mining claims in addition to his salary, and of the some \$214,000 that was raised in all by these promoters, there's still about \$170,000 owing; Grismer never got any of this money; the only money he got was to meet his payrolls, and he actually paid out to the men what he got for that purpose, in addition to his own salary, of course, so that he did not profit. His name was used by the others in order to put the promotion over. He appeared prominently in the prospectus. His conduct was more of negligence or carelessness than anything else, because of the fact that he would sign reports without reading, he would sign reports in blank and give them to them to fill out, which later were filled out and contained false information, and sent to state officials and authorities about the conditions of these mines and the finances, and I have

those brief statements to make. I will say further that it is my belief that he's an uneducated man, that he's a practical miner; he knows how to drive a tunnel and sink a shaft, but he doesn't know anything and never did pretend to know anything about business and financing a mining company.

The Court: Mr. Stocking?

Mr. Stocking: I might add the thought there, I'm not sure it was expressed by Mr. Erickson, that from our investigation during the period that these crimes were alleged to have been committed, the defendant Grismer was under the domination of the defendants Allen and Keane, and that was of course illustrated by his signing these documents and allowing promotion stock to be issued in his name, and then signing the blank stock certificates and turning them back to these other promoters. I think he has a very little part of the stock left that was issued to him; most of it was either taken back by the promoters, or given by him to his associates who owned these mining claims with him.

The Court: All right, Mr. Hawkins.

Mr. Hawkins: Your Honor please, in view of our conference in chambers and the statements made by the United States Attorney and Mr. Stocking of the S.E.C., I don't think it will be necessary for me to make any particular further argument for the purpose of accepting the *nolo contendere*.

The Court: No, I think not.

Mr. Hawkins: I have my client with me, and I'm willing to have him stand and advise the Court whether he is willing to proceed as outlined.

The Court: Are you somewhat hard of hearing, Mr. Grismer?

Mr. Grismer: Yes, your Honor.

The Court: You understand that your attorney has requested permission for you to withdraw your plea of not guilty to this indictment, and enter a plea of nolo contendere to count 7 of the indictment?

Mr. Grismer: I understand that.

The Court: Is that what you wish to do?

Mr. Grismer: I understand that.

Mr. Hawkins: You understand the other six are to be dismissed?

Mr. Grismer: Yes.

The Court: Yes. Very well, the plea of not guilty as to count 7 of the indictment will be withdrawn, and what do you say now to count 7, what plea do you enter to count 7?

Mr. Grismer: Nolo contendere.

The Court: Very well, the plea of nolo contendere will be accepted, and the record may show that it is entered, and upon the motion of the United States Attorney counts 1 to 6 inclusive of the indictment will be dismissed as to the defendant Grismer only, or rather, I should state more accurately, perhaps, that the defendant Grismer will be dismissed from these counts 1 to 6, and they will stand as to the other defendants; and I think that I should have a pre-sentence investigation of the background of this defendant, so I'll refer the matter to the probation officer for a pre-sentence investigation, and defer sentence until after I receive it, and Mr.

Grismer may remain out on whatever bond he has here pending the hearing on sentence. It might be well, Mr. Hawkins, if you'd take Mr. Grismer around to Mr. Swain's office so that they can know where he is, and get such information as they might want. They might want to talk to him a while today. The court will adjourn.

Reporter's Certificate

United States of America,
Eastern District of Washington—ss.

I, Stanley D. Taylor, do hereby certify:

That I am the regularly appointed, qualified and acting official court reporter of the District Court of the United States in and for the Eastern District of Washington. That as such reporter I reported in shorthand and transcribed the foregoing proceedings before the Honorable Sam M. Driver, Judge of the above entitled court, held on January 12, 1949, at Spokane, Washington.

That the above and foregoing contains a full, true, and correct transcript of the proceedings had therein.

STANLEY D. TAYLOR,
Official Court Reporter.

Dated this 31st day of January, 1949.

[Endorsed]: Filed Jan. 31, 1949.

[Title of Court and Cause.]

PROCEEDINGS ON WITHDRAWAL OF PLEA
OF NOT GUILTY AND SUBSTITUTION
OF PLEA OF NOLO CONTENDERE.

(Defendant Allen.)

Spokane, Washington, January 13, 1949.

Honorable Sam M. Driver, United States District
Judge.

Harvey Erickson, United States Attorney appear-
ing for plaintiff.

R. Max Etter, appearing for the defendant Allen.

Mr. Erickson: Mr. Etter, who represents Mr. Allen in this case, indicates that he desires to withdraw his plea of not guilty and enter a plea of nolo contendere to the first six counts of the indictment. If that is done the government will move to dismiss the seventh count, which is the conspiracy count, if the Court entertains the plea on the first six counts of the indictment.

The Court: I was just wondering, here, we may be getting into a queer situation. Keane's plea, as I remember it, of nolo contendere was to all of the counts, wasn't it?

Mr. Erickson: Yes.

The Court: And Grismer's was only as to the conspiracy count?

Mr. Erickson: That's right.

The Court: Now, if we dismiss the conspiracy

count to Allen, we've got Keane in deeper than Allen.

Mr. Erickson: Well, that's right. I'll move to dismiss count 6 instead of 7, then. We can dismiss that as to Keane, then, too.

The Court: Yes; I'd rather have them on the same basis. I think that's fair. Whichever one is dismissed, dismiss as to Keane too.

Mr. Erickson: All right. Instead of count 7, I'll move to dismiss count 6 as to both Mr. Allen and Mr. Keane.

The Court: Very well, the motion will be granted, and I think the record may show that a conference has been held in chambers regarding this matter just prior to this session, in which counsel for the defendant and the United States Attorney were present, so it isn't necessary for you to repeat here in detail, Mr. Etter, your reasons for submitting this plea. Is Mr. Allen here?

Mr. Allen: Yes.

The Court: Do you understand what has taken place here, Mr. Allen?

Mr. Allen: Yes, your Honor.

The Court: And is it your desire that you be permitted to withdraw your plea of not guilty, and substitute a plea of *nolo contendere*?

Mr. Allen: Yes, sir.

The Court: To the remaining counts of the indictment?

Mr. Allen: Yes, sir.

The Court: Very well, you will be permitted to do that, you may withdraw your plea. The record may show that the plea of not guilty has been withdrawn. What do you say now to counts 1 to 5, and count 7, of this indictment?

Mr. Allen: *Nolo contendere*, your Honor.

The Court: Do you confirm that, Mr. Etter?

Mr. Etter: Yes, your Honor.

The Court: Very well, the plea will be received, and the court will direct that a pre-sentence investigation be made in this case, as in the case of the other defendants, and the matter will be set down for hearing when the case is complete. Will you notify Mr. Swain, then, that he is to make a pre-sentence investigation in this case. Court will adjourn until tomorrow morning at 10 o'clock.

Reporter's Certificate

United States of America,
Eastern District of Washington—ss.

I, Stanley D. Taylor, do hereby certify:

That I am the regularly appointed, qualified and acting official court reporter of the District Court of the United States in and for the Eastern District of Washington. That as such reporter I reported in shorthand and transcribed the foregoing proceedings before the Honorable Sam M. Driver, Judge of the above entitled Court, held on January 13, 1949, at Spokane, Washington.

That the above and foregoing contains a full,

true and correct transcript of the proceedings had therein.

Dated this 31st day of January, 1949.

STANLEY D. TAYLOR,
Official Court Reporter.

[Endorsed]: Filed Jan. 31, 1949.

[Title of Court and Cause.]

PROCEEDINGS ON WITHDRAWAL OF PLEA
OF NOLO CONTENDERE AND SUBSTITUTION OF PLEA OF NOT GUILTY

(Defendant Allen)

Be It Remembered, that the above entitled matter came on before the Honorable Sam M. Driver, Judge of the above entitled Court, at Spokane, Washington, on Monday, the 21st day of March, 1949, the plaintiff appearing by Mr. Harvey Erickson, United States Attorney for the Eastern District of Washington, and Mr. Donald R. Stocking, attorney for the Securities and Exchange Commission; the defendants appearing in person and by their counsel, as follows: For the defendant Allen, Mr. R. Max Etter, Mr. J. F. Emigh, and Mr. W. D. Murray; for the defendant Keane, Mr. William Langroise, Mr. R. S. Hunter, and Mr. H. E. T. Herman; for the defendant Grismer, Mr. William S. Hawkins; Whereupon, the following proceedings were had and done, to-wit:

Mr. Etter: Your Honor, with the Court's permission I'd like to move specially for the admission in this particular case of a firm that's been asso-

ciated, members of the Montana bar, Mr. J. F. Emigh and Mr. W. D. Murray.

The Court: They may be permitted to participate in this matter without being admitted to the bar of the court; that's what they wish?

Mr. Etter: Yes, sir, not having sufficient time to apply.

The Court: Now, I've just checked the records of the Clerk, and according to my information, I wish you would check me on this, the defendant Allen has entered pleas of nolo contendere to counts 1, 2, 3, 4, 5 and 7; the defendant Keane has entered please of nolo contendere to each of those counts, that is, all of the counts except 6, the defendant Grismer has entered a plea of nolo contendere to count 7 only, and the counts on which the defendants have not entered pleas of nolo contendere have been dismissed. Is that correct? The matter comes up now for sentence. I might say that the Court has had the benefit of a pre-sentence investigation report prepared by the probation officer as to each of these three defendants. With that in mind I'll hear what the United States Attorney and the Securities & Exchange Commission attorneys have to say, and then the attorneys for the defendants. You might take them in the order in which they're named, Allen, Keane and Grismer.

Mr. Emigh: May it please the Court, I want to apologize to the Court at this time because Mr. Murray and I have not been able to devote the time we should to familiarize ourselves with this case.

At the present time, your Honor, in my mind and also the mind of Mr. Murray there is a condition of uncertainty, and the exact status of this case is obscure in some respects. At common law and under many of the decisions a plea of nolo contendere is accepted only where there is a violation of a regulatory statute or regulation of an administrative body authorized by law to make such a regulation, and ordinarily at common law and under a great many of the decisions the plea is accepted only when the act is punishable in the alternative by fine or imprisonment and when it is deemed that the punishment by fine is sufficient. In this case, in view of the number of things that have transpired in this case, and particularly a circumstance when the defendant Allen through his counsel proposed to lay before the S.E.C. and the probation officer, or whoever required them, his facts as to defense, and that Mr. Etter of counsel depended upon that being done, I believe, at the time the plea of nolo contendere was entered, and we have not been able to exactly understand whether at this time we might feel that the common law rule would be applied in this case, the plea of nolo contendere having been permitted, or whether the later rule, which seems to be the prevailing rule in the 9th Circuit, would apply, that the Court would after hearing all matters determine whether a jail sentence would be imposed, or a fine only. In other words, if we are approaching this case as a regulatory violation with the thought

that a fine only would be the outcome, we would have one feeling on it, and if we felt that it was a hearing where the matter would be considered as on a plea of guilty or conviction, so far as punishment is concerned, we might have another feeling on it, and because counsel is not too clear on that, and because Mr. Murray and I haven't ridden through with the case, I beg to be advised on that before we proceed further, if I might.

The Court: Yes, I think you're entitled to know what the court's view on that is. The first application for permission to submit a plea of *nolo contendere* was made by the defendant Keane, and after some discussion in chambers, in which the government and the defendant were represented, the Court was careful to point out that it was his thought that if a plea of *nolo contendere* were accepted, that the Court would then have the authority to impose any punishment up to the full maximum provided by the statute, and that the Court at that stage did not know the circumstances and wasn't in a position to determine what punishment should be imposed, and that was a matter that would have to be fully reserved, and I attempted to and I think did make that clear to counsel for the defendant Keane. Then I think that later, at the instance or I believe on the request of the United States Attorney or the government attorneys, a plea of *nolo contendere* was accepted for the defendant Grismer on the ground that his part in the whole transaction was a minor one, and that he was rather, to use a popular expression, a "cat's

paw'' of one or more of the other defendants, and the Court accepted a plea of nolo contendere from the defendant Grismer, and then the defendant Allen came in by counsel, and I thought made the logical contention that he shouldn't be by implication singled out as the one villain of the piece here, and that if the others were permitted to enter a plea of nolo contendere he should do so also, and I think there was a suggestion made at that time that he would like at that time, or wished to have a conference in which he'd present his side of it, and have the defendant Keane present his case to the probation officer, and thrash the whole thing out, and that seemed to be acceptable at that time. On further thought it seemed to me that was not the proper way to proceed here, that we shouldn't have an informal hearing of the matter before the probation officer, I could see where there might be difficulties and that that wasn't desirable, and we decided that that should not be done.

Now, it seems to me that so far as the law applicable is concerned, there shouldn't be very much doubt. The case of *United States vs. Hudson*, 272 U. S. 451, is squarely in point as to the authority of the court to impose penitentiary or imprisonment as a part of the sentence upon a plea of nolo contendere, and that, by the way, was a case in which a plea of nolo contendere was entered to several counts of an indictment charging use of the mails to defraud, a fraud case the same as this one, and the court there reviews and calls attention to

the common law rule, and some uncertainty as to what the rule was, and comes to the conclusion that the court does have authority to impose confinement or imprisonment on a plea of *nolo contendere*. I think the last paragraph is rather significant in this, bearing upon perhaps the situation in this case.

“Undoubtedly a court may, in its discretion, mitigate the punishment on a plea of *nolo contendere* and feel constrained to do so whenever the plea is accepted with the understanding that only a fine is to be imposed. But such a restriction made mandatory upon the court by positive rule of law would only hamper its discretion and curtail the utility of the plea.”

Now, it isn't my understanding that there was any condition imposed here as to any of these defendants that the Court was restricted to imposition of a fine in case the plea were accepted, and I don't mean by that that the Court at this time has decided either to impose or not to impose imprisonment. That's a matter on which I am reserving judgment until I fully hear the matter and everything that is to be presented. However, one of the reasons that I thought it wasn't wise to have this hearing that Mr. Eetter suggested, there have been quite a number of conferences in this case, and I suppose there is room for misunderstanding, these presentence investigation reports are not disclosed to anybody except the probation officer and the Judge, and I didn't want to disclose them and I

haven't done so to the attorneys for the S. E. C. or the United States Attorney; I wanted to be in a position where if something developed which seems to be developing now, where any of these defendants come in and claim to be misled in the slightest degree, I will permit them to withdraw their plea of *nolo contendere* and call in another judge and set them for trial. I would be disqualified, but they haven't been disclosed to the United States Attorney or any representative of the government, so the defendants would be in no worse position to defend than they were before, so if anyone feels they were misled, or had reason to believe there would be probation extended, or only a fine, I'll permit them to withdraw the plea.

Mr. Emigh: Would your Honor indulge us a very, very short recess, and we can have a conference on this point.

The Court: All right, the Court will recess for ten minutes.

(Short recess.)

(All parties present as before.)

Mr. Smigh: I first want to thank your Honor for indulging us with this recess. I second want to clear the record on one point; no attorney for Mr. Allen's defense, nor the defendant himself, has been in the slightest way misled in this case, and if the Court interpreted my remarks that I might feel that way, I'm sure your Honor will realize there was no such feeling at all.

The Court: No, I didn't assume that; I meant

to say I wanted to eliminate any possibility of misunderstanding.

Mr. Emigh: I want to state we have had a conference, and that the views of the attorneys are not entirely in accord, and after explaining very carefully to the best of our ability to Mr. Allen the situation which is here, he feels he would sooner have the case tried to a jury, and we will ask leave to withdraw the plea to each of the counts of *nolo contendere*, and substitute therefor a plea of not guilty to each count. Mr. Allen, will you come up?

The Court: I think before I should grant that I will hear from the United States Attorney.

Mr. Erickson: I would like to move for the reinstatement of count 6, under those circumstances.

The Court: What is count 6?

Mr. Erickson: Count 6 is the one that was dismissed as to Allen.

Mr. Emigh: Mr. Allen states he has no objections at all, so we withdraw any objection on the ground of jurisdiction. I don't know whether that re-invests the Court with jurisdiction or not.

Mr. Etter: We have no objection.

The Court: Well, I think what I should do here in view of the situation is to set aside my order dismissing count 6. I think that the record should be that the dismissal of count 6, or the motion of the United States Attorney to dismiss it, was based upon the entering of the plea of *nolo contendere* to the other counts; that was your understanding?

Mr. Erickson: Yes.

The Court: And that the motion for dismissal

was a conditional one, and conditioned upon the entry of a plea of *nolo contendere* to the other counts, and that being the situation, the court will set aside and cancel its order dismissing count 6. Now, I think that I should also, though, reserve, if that is necessary, to the defendants the right to raise the point again when the case is brought to trial before the other Judge, because I haven't time now to examine the question whether I can re-instate a count which is once dismissed.

Mr. Emigh: To cure the record so far as we are able, let the record show that the defendant takes no exceptions to the ruling of the Court in re-instating that count, to make the record as clear as we can.

The Court: Now, do you have anything else to say in that regard, Mr. Erickson?

Mr. Erickson: In regard to the date of trial?

The Court: No, I mean with reference to this motion.

Mr. Erickson: In regard to the motion to withdraw the plea of *nolo contendere*, I have no objection, and think that the case should be tried if the defendant Allen wishes it tried. However, I would not like to have sentence imposed upon the other two defendants until after disposition of the Allen case. I think that your Honor probably should pass sentence; if another Judge tries the Allen case I think maybe your Honor should pass sentence on Grismer and Keane, since it's gone this far before this Court.

The Court: Well, yes, I see no reason for relinquishing jurisdiction so far as those defendants are concerned. I think, however, too, in view of the fact if the motion is granted to the defendant Allen, a similar opportunity should be given to the other defendants, and I'll hear from their attorneys. Is Mr. Grismer represented by attorney here?

Mr. Hawkins: Yes, your Honor.

The Court: You will have the same opportunity.

Mr. Hawkins: Our plea of *nolo contendere* as to count 7 still stands.

The Court: How about the defendant Keane?

Mr. Herman: The defendant Keane's pleas of *nolo contendere* still stand.

The Court: Very well, the motion of the defendant Keane to withdraw—the defendant Allen—I mis-spoke, the defendant James Anthony Allen to withdraw his pleas of *nolo contendere* to all of the seven counts of the indictment except count 6 will be granted, and the pleas will be withdrawn, and now what pleas are entered for the seven counts of the indictment?

Mr. Emigh: Please of not guilty of all counts.

The Court: That's right, Mr. Allen?

Defendant Allen: Yes.

The Court: Alright, the record may show that the defendant Allen has entered pleas of not guilty to each of the seven counts of the indictment. I think that the case should be disposed of as a whole, here, and I will defer sentencing the other defendants until after the trial of the defendant Allen.

Mr. Herman: If your Honor please, would your Honor be kind enough to grant us a moment for a conference? We have something we may wish to propose.

The Court: Yes. You may withdraw if you wish; I think I have some *ex parte* matters.

(Short recess from this cause.)

(All parties present as before.)

Mr. Herman: May it please your Honor, counsel for the defendant Keane desire to express their appreciation to your Honor for giving him an opportunity to confer and see whether or not there was anything that should be done further at this particular time. Our agreement is that there is nothing further to be done, if your Honor will excuse the defendant Keane at this time, and his counsel, from attendance upon the Court.

The Court: Very well, he'll remain out on bail and will be notified to come in again. Is there anything else to come before the court this morning. I think perhaps I should say, while attorneys for the defendant Allen and the United States Attorney is here, we have a jury term set here for April. I was just considering the possible trial dates. Of course, that necessarily must be very tentative, because it would depend upon the program of whatever Judge is assigned by Judge Denman and what his program may be. I have a jury in session here up until the week of the 25th of April, and then I have a jury term in Yakima during May, but I

suppose this case—well, it couldn't be tried here if you have criminal cases down there, or would your assistant down there take the cases in Yakima?

Mr. Erickson: Yes.

The Court: Well, it could be tried here in May while I have a session in Yakima. Do you have any ideas about when you might be ready to enter into a trial of the case?

Mr. Etter: Your Honor, May would be allright. I only have this to say; I'll probably be faced with a trial in Superior Court on change of venue with an outside judge in April that may run three weeks or longer, and I was hoping if it was in May it would be toward the middle of the month, to be sure I'm through with this case involving these nine miners from Metaline Falls.

The Court: I go to Boise on the 16th; we weren't going to start the term there until the 23rd. Will it take more than one week to try this case?

Mr. Stocking: I'd say probably two weeks.

The Court: You think it can be tried in two weeks?

Mr. Etter: I think it can be tried in two weeks.

The Court: The 25th of April, that would be a little soon for you?

Mr. Etter: That's right; I won't be through over here, your Honor.

The Court: Well, I think it might be difficult to get an outside Judge, they usually have calendars made up, and we have to wait until they're through

at home. I'll try to arrange it for sometime in May, toward the latter part of May. Is there anything else? If not, the Court will recess until 1:30 this afternoon.

Reporter's Certificate

United States of America,
Eastern District of Washington—ss.

I, Stanley D. Taylor, do hereby certify:

That I am the regularly appointed, qualified and acting official court reporter of the District Court of the United States in and for the Eastern District of Washington. That as such reporter I reported in shorthand and transcribed the foregoing proceedings before the Honorable Sam M. Driver, Judge of the District Court of the United States for the Eastern District of Washington, held on March 21, 1949, at Spokane, Washington.

That the above and foregoing contains a full, true, and correct transcript of the proceedings had therein.

Dated this 25th day of March, 1949.

STANLEY D. TAYLOR,

Official Court Reporter.

[Endorsed]: Filed Mar. 25, 1949.

[Title of Court and Cause.]

MOTION TO STRIKE EXHIBITS
AND TESTIMONY

Comes now James Anthony Allen, defendant in the above entitled action, and upon the close of the plaintiff's case and after counsel for the United States of America having announced that plaintiff rested, moves this honorable court to strike from the evidence in this cause the following matter, to wit:

All exhibits identified and admitted in evidence or identified or admitted in evidence pertaining to and relating to any transactions which said exhibits tend to prove and establish transpiring and occurring or alleged to have transpired or occurred or which said exhibits tend to prove as having transpired or occurred subsequent to the 26th day of December, 1946, as well as all testimony relating to matters and things alleged to have transpired or occurred or which said testimony tends to prove transpired or occurred subsequent to the 26th day of December, 1946, and heretofore objected to by counsel for defendant, on the following grounds and for the reasons as follows:

First, that the evidence affirmative shows and discloses that subsequent to the said 26th day of December, 1946, as appears from the plaintiff's evidence, and particularly from the evidence of the government's witness, Francis Clayton Keane, no conspiracy existed or could have existed between

this defendant and said defendant Francis Clayton Keane, or between this defendant and the defendant Joseph Valentine Grismer, or between any two or more of said three defendants, and that the evidence in behalf of plaintiff affirmatively discloses and shows that the said defendant, Joseph Valentine Grismer, was at no time a party to or a participant in the alleged conspiracy set forth in the indictment on file herein. That said evidence is incompetent for any purpose in the absence of affirmative proof on the part of the plaintiff that at any time subsequent to the 26th day of December, 1946, the conspiracy alleged in the indictment was still in existence and it appearing from the evidence that the defendant James Anthony Allen and the defendant Francis Clayton Keane at no times subsequent to the 26th day of December, 1946, were on friendly relations or did conspire or scheme together to do any act unlawful or otherwise.

And, for the further reason and on the ground that because it affirmatively appears from the testimony adduced from witnesses who have been called and testified on behalf of the government, that the said Joseph Valentine Grismer could not be and was not a party to any conspiracy whatsoever at the time of the inception of any conspiracy as alleged in the indictment against this defendant and the said Francis Clayton Keane and Joseph Valentine Grismer, and therefore could not conspire with or be a party to the conspiracy as alleged in said

indictment with the said defendant Allen after the 26th day of December, 1946.

Dated this 15th day of June, 1949.

R. MAX ETTER,
J. F. EMIGH,
JAMES A. MURRAY,
THERRETT TOWLES,
WILLIAM E. CULLEN,
Attorneys for
Defendant Allen.

[Endorsed]: Filed June 15, 1949.

[Title of Court and Cause.]

DEFENDANT ALLEN REQUESTS THE
COURT TO GIVE THE FOLLOWING IN-
STRUCTIONS TO THE JURY

Instruction No. 1

You are instructed that the indictment in this case is merely a written charge against the defendant to bring the matter of his guilt or innocence before the court for trial, and that you must not under any circumstances infer from such indictment, or the bringing thereof, that the defendant Allen is in any respect guilty of the acts charged in the indictment, nor is such indictment, or the bringing thereof, any evidence of his guilt.

Instruction No. 2

You are instructed that the defendant Allen

cannot be found guilty of the commission of one or more of the offenses charged in Counts 1 to 6, inclusive, of the indictment by proof alone that he did aid, abet, or counsel in the doing of the overt acts charged in paragraph two of each of said respective counts, unless and until you further find from all of the evidence in the case beyond a reasonable doubt that he did likewise knowingly and intentionally conspire to devise and intend to devise the identical scheme and artifice set forth in paragraph one of each of said Counts 1 to 6, inclusive; mere aiding or abetting or counselling in the doing of one or more of the overt acts charged in Counts 1 to 6, inclusive, of the indictment is not sufficient to constitute the offenses charged. You must first find that the defendant did knowingly and intentionally conspire to devise the identical scheme or artifice set forth in paragraph one of the first count in the indictment.

Instruction No. 3

You are instructed that before you can find the defendant Allen guilty of any of the offenses charged in the indictment you must first find from the evidence and beyond a reasonable doubt that said defendant Allen did knowingly and with fraudulent intent devise and intend to devise the identical scheme and artifice to defraud charged in the indictment and did knowingly and fraudulently intend thereby to obtain from the purchasers of treasury stock, as elsewhere defined in these instructions, money received from the public sale of said stock,

and unless such fraudulent intent did actually exist at the time the treasury stock of said corporations, of either thereof, was offered to the public for sale, defendant Allen is not guilty of the offenses so charged; and it is your duty to acquit the defendant Allen, and in this connection you are instructed that it is not material if the funds procured by the sale of said stock were diverted for other purposes, if you find they were so diverted, if such diversion was not contemplated at the time of the offering of said stock for sale.

Instruction No. 4

You are instructed that any fraudulent act done or intent entertained by the defendant Keane and undisclosed to the defendant Allen would not be binding upon the defendant Allen or chargeable against him, though he may have directly or indirectly profited thereby, unless at the time he shared in such profits he had acquired knowledge that Keane intended to defraud the Lucky Friday Extension or Pilot Companies by his acts.

Instruction No. 5

You are instructed that the defendant Allen is not charged with the crime of embezzlement of any monies from the Lucky Friday Extension or Pilot Companies. This court would have no jurisdiction of such a charge in this case and as such a charge would have to be prosecuted in the State courts of Idaho. The use of the term "embezzlement" in the

indictment herein and in the instructions and the evidence relates solely to the alleged purposes of the conspiracy, and unless you find beyond a reasonable doubt the alleged conspiracy existed, you are cautioned to wholly disregard any evidence relating to diversion of funds of the Extension and Pilot Companies.

Instruction No. 6

You are instructed that there is no evidence in this case from which you may legitimately infer that the defendants, in order to create an appearance of mining activity on the part of the Extension and Pilot Companies, did expend a small portion of the funds belonging to said corporations on the mining properties thereof for the purpose of increasing the market value of defendants' promotion stock. To the contrary the evidence is that in excess of \$100,000 was employed in legitimate mining operations, and the inference which you must draw from this evidence is that of innocence.

Instruction No. 7

You are instructed that the Government has produced no evidence in this case that the defendant Allen has schemed and conspired to conceal from the stockholders of said Lucky Friday Extension and Pilot Companies information concerning the receipts and expenditures of moneys of said corporations.

Instruction No. 8

You are instructed that the Government has

produced no evidence in this case that the defendant Allen has schemed and conspired that proper books of account of the Lucky Friday Extension and Pilot Companies would not be kept and maintained.

Instruction No. 9

As you have already been instructed, a conspiracy may be proved either by direct or circumstantial evidence. It is not usual for it to be proved by the use of circumstances. Men who agree to violate the statutes of the United States do not very often call in a stenographer and prepare an agreement to that effect. For this reason, the law says that, in a conspiracy case, the Government may be permitted to present its case on what the law calls "circumstantial evidence." That is what the Government is striving to do here. It contends that certain things happened and that certain events occurred. It contends that these could not have happened by mere coincidence unless there was an agreement for a concert of action between at least two of the defendants. Therefore, it asks you, as a jury, to conclude that there must have been a conspiracy. The Government has a right to so contend. Yet, when it does ask for a conviction on circumstantial evidence, it has the burden, not only of proving the facts or circumstances to your satisfaction beyond all reasonable doubt, but it must also satisfy you, beyond all reasonable doubt, that such circumstances are only consistent with guilt. You must believe, before you can find the defendant guilty in this case, that the circumstances proved

as to him exclude all reasonable possibility of his innocence, and that, after considering all the inferences reasonably to be drawn from the circumstances, your sound judgment requires you to reject other inferences and accept only the inference of guilt. The law requires that you study all the evidence and that you weigh carefully the conclusions or inferences favorable to the defendant as well as those unfavorable.

Instruction No. 10

You are instructed that in this case the evidence offered by the Government to establish a conspiracy to use the mails to defraud and the intent of the defendant Allen to use the mails to defraud is circumstantial in character, and in this regard you are instructed that the proof of any element of a crime, which rests upon circumstantial evidence, must establish such element, not only beyond a reasonable doubt, but to the exclusion of every reasonable hypothesis of innocence.

Instruction No. 11

You are instructed that the stock issued by the Lucky Friday Extension Mining Company and the Pilot Silver-Lead Mines, Inc., in connection with the transactions mentioned in the testimony in this case falls into three classifications: First, promotion or vendor's stock which was issued to the owners of the mining properties or contracts therefor that were to be transferred to the companies; second, attorney's stock which was stock issued for services

of attorneys in incorporating and organizing said corporations, making title examinations, and passing on the legality of other matters connected with the organization of said corporations; and, third, treasury stock which was stock placed in the treasury and offered for sale to the public in accordance with SEC rules and regulations.

Instruction No. 12

You are instructed that the defendant Allen had a right to sell promotion or vendor's stock which came into his possession at any time after one year from the date of the first public offering of stock by either the Pilot or Extension Companies respectively had expired, whereupon the mere sale thereof was no fraud upon the public or the purchasers thereof, and the matters and things set forth in the prospectus for the offering of treasury stock would constitute no matter upon which fraud in the sale of said promotion or vendor's stock could be based.

And therefore you are not to consider any acts charged in the indictment as being proven by sales of promotion or vendor's stock by defendant Allen after the expiration of one year from the date of the first public offering of such stock, unless you further find by the evidence and beyond a reasonable doubt such sale was made in furtherance of an unlawful conspiracy.

Fletcher Cyc. Corporations, Vol. II, Sec. 5089.

Instruction No. 13

You are instructed that the defendant Allen had the legal right to sell any stock in the Pilot or Extension Companies owned by him upon the following conditions:

First, that such sale occurred after the expiration of one year after the date of the first offering of such corporations' stock for sale through an underwriter; or,

Second, upon brokers transaction executed upon customers' orders on any exchange or in the open or counter market, but not on the solicitation of such orders.

Therefore, unless you do find from the evidence and beyond a reasonable doubt that said defendant did participate in the conspiracy charged in the indictment no sales of stock belonging to the defendant, of which evidence has been introduced in this case, may be by you considered as constituting fraudulent transactions of the defendant.

Title 15, USCA, Sec. 77d (1), (2).

Instruction No. 14

The witnesses Francis C. Keane and Joseph V. Grismer in this case are confessedly what is known in the law as accomplices. The fact that a witness is known as an accomplice doubtless operates and ought to operate largely against the credibility of his testimony, but the jury is not bound to reject such testimony merely because the witness is an accomplice. Accomplices are competent witnesses,

and it is your duty to consider their testimony, but in doing so, you should weigh it and scrutinize it with great care. You are to test its truth by inquiring into the probable motives which prompted it and to what extent such motives might have colored or warped it. You are to look into the testimony of other witnesses in the case for corroborating facts or circumstances. Where the testimony of an accomplice is supported in material respects by credible and trustworthy evidence, you are bound to credit it, but where it is unsupported and uncorroborated, you are not to rely upon it unless, after the exercise of great caution, it produces in your minds the most positive conviction of its truth, in which case you are justified in acting upon it.

Instruction No. 15

You are the exclusive judges of what is the evidence in this case, and of the weight and credit to be given the testimony of each witness. In doing this, you may take into consideration the conduct, appearance and demeanor of the witness while testifying; his apparent candor and frankness, or the lack of such qualities, the reasonableness or unreasonableness of his story, its probability or its improbability, as measured by your common experience in life; the opportunity on the part of any witness, of knowing or being informed concerning the matters about which he testifies; his intelligence, or lack of intelligence; any prejudice, or bias, disclosed by him; any motive, which in your judgment

would cause him to warp or color his testimony one way or the other; and the interest, if any, which he may have in the outcome of the case. I further instruct you, if you find that any witness has wilfully testified falsely as to any material fact, then you are at liberty to disregard his entire testimony, except insofar as it is corroborated by other evidence of a credible character.

Instruction No. 16

The jury are instructed that if they believe from the evidence any witness has been successfully impeached, by reason of statements made outside of the case conflicting with statements made on the witness stand, or if they find that any witness has wilfully sworn falsely to any matter or thing material to the issues in the case, they will be justified in disregarding the whole testimony of such witness except in so far as they may find the same to be corroborated by other credible evidence in the case or by facts and circumstances proved on the trial.

Blashfield, Instructions to Juries,

Vol. 2, Instr. 871.

R. MAX ETTER,
J. F. EMIGH,
JAMES A. MURRAY,
THERRETT TOWLES,
WILLIAM E. CULLEN,
Attorneys for
the Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed June 15, 1949.

[Title of Court and Cause.]

**MOTION FOR JUDGMENT OF ACQUITTAL
AT CLOSE OF PLAINTIFF'S CASE**

At the close of evidence and testimony on behalf of the plaintiff, United States of America, and the United States Attorney for the Eastern District of Washington having stated to the court that plaintiff had rested and had completed its case in chief, the said defendant James Anthony Allen by and through his attorneys of record hereby moves the court to order the entry of a judgment of acquittal of all offenses of any kind or nature as charged, alleged and laid in each and every one of the counts in said indictment against the defendant James Anthony Allen, for the reasons and on the grounds as follows:

1. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 1 of the indictment to support any charge of crime alleged therein.

2. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 2 of the indictment to support any charge of crime alleged therein.

3. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged

in Count 3 of the indictment to support any charge of crime alleged therein.

4. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 4 of the indictment to support any charge of crime alleged therein.

5. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 5 of the indictment to support any charge of crime alleged therein.

6. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 6 of the indictment to support any charge of crime alleged therein.

7. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 7 of the indictment to support any charge of crime alleged therein. And for the further reason as to Count 7 of the indictment, that the testimony of the accomplice, defendant, Francis Clayton Keane, fails to establish any conspiracy as charged in the indictment, if credible, and in any event that the character of said witness is such under the evidence that his testimony is wholly insufficient

and incredible to establish a conspiracy as alleged in Count 7 or to connect this defendant therewith.

Dated this 15th day of June, 1949.

R. MAX ETTER,
J. F. EMIGH,
JAMES A. MURRAY,
THERRETT TOWLES,
WILLIAM E. CULLEN,
Attorneys for
Defendant Allen.

[Endorsed]: Filed June 15, 1949.

[Title of Court and Cause.]

MOTION FOR JUDGMENT OF ACQUITTAL
AT CLOSE OF ALL TESTIMONY

At the close of the evidence and testimony in this case in behalf of the plaintiff, the United States of America, and the defendant, James Anthony Allen, and after respective counsel for both parties have stated to the court that each of said parties had rested and completed its case, the said defendant James Anthony Allen by and through his attorneys of record hereby moves the court to order the entry of a judgment of acquittal of all offenses of any kind or nature as charged, alleged and laid in each

and every one of the counts in said indictment against the defendant James Anthony Allen for the reason and on the grounds as follows :

1. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 1 of the indictment to support any charge of crime alleged therein.

2. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 2 of the indictment to support any charge of crime alleged therein.

3. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 3 of the indictment to support any charge of crime alleged therein.

4. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 4 of the indictment to support any charge of crime alleged therein.

5. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 5 of the indictment to support any charge of crime alleged therein.

6. That the plaintiff has wholly and completely

failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 6 of the indictment to support any charge of crime alleged therein.

7. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 7 of the indictment to support any charge of crime alleged therein. And for the further reason as to Count 7 of the indictment, that the testimony of the accomplice, defendant, Francis Clayton Keane, fails to establish any conspiracy as charged in the indictment, if credible, and in any event that the character of said witness is such under the evidence that his testimony is wholly insufficient and incredible to establish a conspiracy as alleged in Count 7 or to connect this defendant therewith.

Dated this 16th day of June 1949.

R. MAX ETTER,

J. F. EMIGH

JAMES A. MURRAY,

THERRETT TOWLES,

WILLIAM E. CULLEN,

Attorneys for Defendant
Allen.

[Endorsed]: Filed June 16, 1949.

[Title of Court and Cause.]

VERDICT

We, The Jury In The Above Entitled Cause, find the defendant James Anthony Allen, Not guilty as charged in Count 1, Not guilty as charged in Count 2, Not guilty as charged in Count 3, Not Guilty as charged in Count 4, Not guilty as charged in Count 5, Not guilty as charged in Count 6, and is guilty as charged in Count 7, of the Indictment.

JOHN A. RAUSCH,
Foreman.

[Endorsed]: Filed June 19, 1949.

[Title of Court and Cause.]

MOTION FOR JUDGMENT OF ACQUITTAL OR FOR NEW TRIAL ON COUNT VII

Now comes the defendant, James Anthony Allen, in the above entitled cause and pursuant to Rule 29B of the Federal Rules of Criminal Procedure, and moves that the Court will order a verdict of not guilty as to him on Count VII of the Indictment herein or for a new trial as to Count VII on the grounds and for the following reasons, to-wit:

(1) That the finding of the Jury that defendant herein was guilty upon Count VII was and is

wholly, and inherently inconsistent and wholly and completely repugnant with, and to, its findings of not guilty upon Counts I, II, III, IV, V, and VI of said Indictment; and for the further reason that there was not and is not any legal evidence or any evidence whatsoever to support the verdict of the Jury on Count VII of the Indictment other than the exact and self-same facts alleged and pleaded in detail and received in evidence in support of the other Counts, namely, Counts I, II, III, IV, V, VI, which were likewise pleaded in the same exact detail in support of Count VII; that the Jury in view of, and after consideration of, all of the self-same and exact facts and allegations pleaded in detail in Counts I to VI of the Indictment and repeated in Count VII found the defendant not guilty upon each and every one of said Counts I to VI included, and upon the facts pleaded in support of said Counts; and therefore all of said facts in Counts I to VI should be eliminated in toto when considering said Count VII; that this being done, there was, and is no legal evidence or evidence of any kind whatsoever in fact or law to support the verdict in any manner whatsoever on Count VII.

(2) The verdict of the Jury on Count VII is contrary to the evidence in said cause.

(3) The verdict of the Jury on Count VII is contrary to law.

(4) Errors by the Court in the reception and

exclusion of evidence were prejudicial to the defendant.

(5) The Court erred in its charge and instructions to the Jury.

(6) That no conspiracy in view of No. (1) set forth above has been proved by the Government and the Government has also failed to prove any criminal intent or either separate or joint and concerted criminal action on the part of the defendant, and has failed to connect the defendant in any manner whatsoever with the crime set out in Count VII in view of and because of No. (1) heretofore set forth.

R. MAX ETTER,
J. F. EMIGH,
JAMES A. MURRAY,
WILLIAM E. CULLEN,
THERRETT TOWLES,
Attorneys for Defendant,
James Anthony Allen.

Copy received this 24th day of June 1949.

HARVEY ERICKSON,
U. S. Atty.
Attorney for U.S.,
Plaintiff.

[Endorsed]: Filed June 24, 1949.

[Title of Court and Cause.]

MOTION IN ARREST OF JUDGMENT

Now comes the defendant, James Anthony Allen, in the above entitled cause and moves that the verdict of guilty returned against him by a Jury in this Court on Count VII of the Indictment upon the 19th day of June, 1949, be arrested and no judgment and sentence be imposed thereon for the following reasons:

(1) That the offense alleged and set out in Count No. VII was not and has not been proved as against the defendant by any competent or legal evidence, or any evidence whatsoever and for the further reason:

(a) That the finding of the Jury that defendant herein was guilty upon Count VII was and is wholly, and inherently inconsistent and wholly and completely repugnant with, and to, its finding of not guilty upon Counts I, II, III, IV, V, and VI of said Indictment; and for the further reason that there was not and is not any legal evidence or any evidence whatsoever to support the verdict of the Jury on Count VII of the Indictment other than the exact and self-same facts alleged and pleaded in detail and received in evidence in support of the other Counts, namely, Counts I, II, III, IV, V, VI, which were likewise pleaded in the same exact detail in support of Count VII; that the Jury in view of, and after consideration of, all of the self-same and exact facts and allegations pleaded in detail in

Counts I to VI of the Indictment and repeated in Count VII found the defendant not guilty upon each and every one of said Counts I to VI, included, and upon the facts pleaded in support of said Counts; and therefore all of said facts in Counts I to VI should be eliminated in toto when considering said Count VII; that this being done, there was, and is no legal evidence or evidence of any kind whatsoever in fact or law to support the verdict in any manner whatsoever on Count VII.

(2) There was and is no evidence in view of the above, sufficient to prove, that the defendant did commit or has committed any offense against the United States of America, as to Count VII of the Indictment.

R. MAX ETTER,
J. F. EMIGH,
JAMES A. MURRAY,
WILLIAM E. CULLEN,
THERRETT TOWLES,
Attorneys for Defendant,
James Anthony Allen.

Copy received this 24th day of June 1949.

HARVEY ERICKSON,
U. S. Attorney,
Attorney for U.S.,
Plaintiff.

[Endorsed]: Filed June 24, 1949.

District Court of the United States for the Eastern
District of Washington, Northern Division

No. C-7975

JUDGMENT AND COMMITMENT

UNITED STATES OF AMERICA,

vs.

JAMES ANTHONY ALLEN

On this 16th day of July, 1949 came the attorney for the government and the defendant appeared in person and by counsel, R. Max Etter and J. F. Emigh.

It is Adjudged that the defendant has been convicted upon his plea of Not Guilty and a Verdict of Guilty of the offense of Conspiracy in Violation of Sec. 88, Title 18, U.S.C.A. as charged in Count VII of the Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjūdged that the defendant is guilty as charged and convicted.

It Is Adjūdged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Eighteen (18) Months.

It Is Adjūdged that stay of execution be and hereby is granted to July 23, 1949, at 11:00 a.m.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

LLOYD L. BLACK,
United States District Judge.

Presented by:

HARVEY ERICKSON,
United States Attorney.

The Court recommends commitment to: United States Penitentiary at McNeil Island, Washington.

A. A. LaFRAMBOISE,
Clerk.

By EVA M. HARDIN,
Deputy.

[Endorsed]: Filed July 16, 1949. Recorded General Book 15, Page 982.

[Title of District Court and Cause.]

BAIL BOND PENDING DETERMINATION
OF APPEAL

Know All Men by These Presents, That we James A. Allen as Principal, and the National Automobile & Casualty Insurance Co., a Corporation, as Surety, are held and firmly bound unto the United States of America, in the full and just sum of Fifteen

Thousand (\$15,000.00) Dollars, to be paid to the United States of America to which payment well and truly to be paid, we bind ourselves and heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 22nd day of July in the year of our Lord One Thousand Nine Hundred and Forty-nine.

Whereas, Lately at the last term of the District Court of the United States, for the Eastern District of Washington, Northern Division, in a suit pending in said Court, between the United States of America, plaintiff, and James A. Allen, defendant, a judgment and sentence was rendered against the said defendant James A. Allen and the said James A. Allen has appealed to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and sentence in the aforesaid suit.

Now, the condition of the above obligation is such that if the said James A. Allen shall appear either in person or by attorney in the United States Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause, in said Court, and shall prosecute his said appeal, and abide by and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit in said cause, and shall surrender himself in the execution of the judgment and sentence appealed from, as said Court may direct, if the judgment and sentence against him shall be affirmed, or the appeal is dismissed; and if he shall

appear for trial in the District Court of the United States, for the Eastern District of Washington, Northern Division, such day or days as may be appointed for retrial by said Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void; otherwise to remain in full force, virtue and effect.

JAMES A. ALLEN,

Principal.

NATIONAL AUTOMOBILE &
CASUALTY INSURANCE
COMPANY,

[Seal]

KARL J. KAFFLEN,

Resident Agent.

By ED GROVES,

Attorney-in-Fact.

[Corporate Seal]

This Bond is Void if in excess of \$15,000.00.

This Bond is Void if issued after August 15, 1949.

State of California,

County of Los Angeles—ss.

On this 20th day of July, in the year 1949, before me, Jean Gunter, a Notary Public in and for said County and State, personally appeared Ed Groves, known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-Fact of the National Automobile and Casualty Insurance Co., and acknowledged to me that

he subscribed the name of the National Automobile and Casualty Insurance Co., thereto as surety, and his own name as Attorney-in-Fact.

[Notarial Seal]

JEAN GUNTER,

Notary Public in and for Said
County and State.

My Commission expires August 6, 1952.

Jurat-Calif.

Form 4437A 5 M-6-48 S.F.

Bond approved as to Form:

FRANK R. FREEMAN,

Asst. United States Attorney.

Bond approved this 22nd day of July, 1949.

SAM M. DRIVER,

Judge.

[Endorsed]: Filed July 22, 1949.

[Title of Court and Cause.]

NOTICE OF APPEAL

1. Name and Address of Appellant.

James Anthony Allen

1327 Old National Bank Building

Spokane 8, Washington.

2. Name and Address of Appellant's Attorneys.

R. Max Etter

726 Paulsen Building,

Spokane 8, Washington

J. F. Emigh
55 West Broadway
Butte, Montana.

James A. Murray
1624 Eye Street, N.W.,
Washington, D. C.

William E. Cullen,
726 Paulsen Building,
Spokane 8, Washington.

Therrett Towles
1231 Old National Bank Building,
Spokane 8, Washington.

3. Offense.

Violations:

Title 18, U.S.C.A., Sec. 338.

Using Mails to Defraud—Counts I to III
incl.—Acquitted.

Title 15, U.S.C.A., Sec. 77 (q).

Fraud in Sale of Securities—Counts IV to
VI incl.—Acquitted.

Title 18, U.S.C.A., Sec. 88.

Conspiracy—Count VII—Guilty.

4. Date of Judgment.

July 16, 1949.

5. Brief description of judgment and sentence.

Adjudged convicted upon verdict of guilty
of offense of conspiracy in violation of Sec. 88,
Title 18 U.S.C.A., as charged in Count VII
of Indictment. Adjudged that appellant be

committed to custody of Attorney General for imprisonment for 18 months.

6. Admitted to bail.

I, James Anthony Allen, the above-named Appellant, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the judgment above mentioned.

Dated July 25, 1949.

JAMES ANTHONY ALLEN,
Appellant.

Two copies of above notice mailed to Harvey Erickson, U. S. Attorney, this 25th day of July, 1949.

Copy of notice mailed Clerk, U. S. Court of Appeals, this 25th day of July, 1949.

EVA M. HARDIN,
Deputy Clerk.

[Endorsed]: Filed July 25, 1949.

[Title of Court and Cause.]

IMPOSITION OF SENTENCE AS TO
KEANE AND GRISMER

Be It Remembered that the above-entitled matter came on before the court at Spokane, Washington on Friday, August 5, 1949, Honorable Sam M. Driver, United States District Judge, the defendant Francis Clayton Keane being personally present and represented by his counsel William

Langroise of Boise, Idaho, and R. S. Munter and H. E. T. Herman of Spokane, Washington; the defendant Joseph Valentine Grismer being personally present and represented by his counsel William S. Hawkins of Coeur d'Alene, Idaho, whereupon the following proceedings were had and done, to wit:

The Court: I might say that counsel should proceed on the assumption that the Court has had a rather comprehensive pre-sentence investigation report, has consulted and advised with the Probation Officer as to these two defendants, and has examined the voluminous testimony of both Mr. Keane and Mr. Allen in the trial of United States against Allen, and has also consulted with Judge Black, who was the presiding judge in the Allen case, so that you may assume that the court has a rather complete background of information, in making your statements. Do you have any statement to make first, Mr. Erickson?

Mr. Erickson: No, if it please the Court, we have no statement to make unless the court desires something explained in the case. We have Mr. Denney and Mr. Stocking and myself to try and answer any questions the Court may have.

The Court: Very well. Mr. Grismer isn't represented by counsel?

Mr. Erickson: Yes, by Mr. Hawkins.

The Court: Well, I don't think I need to hear from you. I had in mind putting him on probation. Everybody seems to agree that should be done. I'll hear from counsel for the defendant Keane.

Mr. Langroise: If your Honor please, in light of your statement I'll try to confine my remarks primarily to information which I have as to the things which we believe are related to the indictment and the plea, as I have known the defendant Keane for perhaps some 25 years, and as a matter of fact longer than that, some thirty years, I guess. I went to school with him and have known him intimately since that time. Along in February of 1947, the latter part, I believe, I received a telephone call from Mr. McCann, who is a partner of Mr. Keane, who had returned rather recently, or within a year or so, from the service, and I was asked to come from my office in Boise to meet with he and Mr. Keane in Wallace. I did make the trip, and was at that time advised that there was something of this situation, and that they were satisfied that these funds were not going to be available to be returned, they couldn't get them, there had to be some action taken to try to preserve, if possible, what assets there were for the benefit of the creditors.

Mr. McCann and myself took the secretary in Mr. Keane's office and gathered together all of the cancelled checks, all of the records that they had, got someone to assist in trying to assemble that information to try to determine if possible, as best we could, what the facts were. It developed that something in excess of \$75,000 of Mr. Keane's money had gone into the enterprise. It also developed that Mr. Keane had no stock, he had no funds, and that the funds were elsewhere.

After several days I returned to Boise and a further check was to be made to try to get additional information. Following that, Mr. Keane and Mr. McCann came to my office in Boise where they remained for some three weeks or better, in trying to gather such facts as we could concerning this matter. We had some difficulty in securing information from Mr. Keane. At times he was difficult to get it from, not through unwillingness, but otherwise. Following that we prepared and instituted an action against Mr. Allen which had for its purpose the recovery of stock and funds for the benefit of creditors of the partnership. This suit was filed in May, the latter part of May of 1947. We made a complete and full disclosure of all the facts without regard of where the stones might fall in our complaint, setting up the various properties acquired, the various obligations and contributions, that Keane's contributions had exceeded Allen's in excess of \$75,000.

The Court: That was a year or more before this action started?

Mr. Langroise: And a year or more before there was any investigation—that is, before we knew of any investigation. In this action, if your Honor please, we sought to have a receiver appointed, as the books, all of the assets whatever they may have had in these various companies in which stock had been sold and which had originally or in some instances had been organized by Allen and Keane, were in the possession of Mr. Allen, so we also

joined these various corporations, hoping to tie in with their books, tie in whatever assets they had, give a receiver an opportunity to try to recover and salvage out of these funds sufficient to take care of the creditors of the partnership.

The hearing on our application for a receiver was set for I believe it was sometime in June or July. We came north, that is, I came north, and met them here. Prior to that time we had had casual discussion and found that we were getting nowhere, but we met this time with counsel for Mr. Allen and with Mr. Allen. I say we met; Mr. McCann and myself met, as Mr. Keane did not meet and was not able to participate in those meetings. What looked like an opportunity perhaps to work the matter out developed, and the hearing on our application for receiver was continued for a few days. As a result of this conference an agreement was entered into between Mr. Allen and Mr. Keane whereby Mr. Allen agreed to put into a trust fund, or into a trust, stocks of various kinds and in various amounts which I will give you in detail a little later, and to proceed with the registration and development of this so it would be possible to carry these properties on. We also at that time worked out, or a trust was created to be the depository of these stocks which Mr. Allen was to put into the trust, and at the same time arrangements were made with one of the companies with which they were indebted to make certain transfers to them in satisfaction of their liability to that company.

As a part of this agreement a stipulation was entered into by Mr. McCann and myself as counsel for Mr. Keane, with Mr. Allen's attorneys, that the Idaho action might be dismissed. Time went on. No progress was being made. It became evident to us that there was no intention on the part of Mr. Allen to carry through on his agreement, so we proceeded to make application to the District Court of Idaho in which the action had been pending, to set aside the dismissal on the ground of fraud. A hearing was held upon our application, and it was granted. That matter was then appealed by Mr. Allen to the Supreme Court of Idaho. During the time that all of this was taking time, last spring the Supreme Court, I'm not sure of my dates on that, if your Honor please, but the Supreme Court at any rate handed down a decision reversing the District Judge on the ground that there was some question as to service with respect to some of the defendants, also a question as to whether or not there had been a sufficient showing as to our moving within the time that we should move, within the time that we became convinced of this, otherwise determining the right to set aside the default. Following the handing down of this decision by the Supreme Court we filed additional affidavits with respect to our showing, noticed up the others, as to our intention to seek the setting for hearing, and ultimately the joinder has been made, and the matter is now set for hearing tomorrow at Wallace on our application.

I have perhaps gone into considerable detail, but I wanted to do so merely, if your Honor please, to indicate to you the good faith that has been evidenced by Keane in regard to this matter. The entire burden of the expense of this has been borne by Keane. All of the effort has been put out by Keane, with no assistance whatsoever from anybody. That case will be continued and will be prosecuted, and Keane of course is most essential to us in trying to carry through that litigation which has for its purpose the recovery of the funds which the creditors of this partnership are entitled to receive. I know of my own knowledge that Mr. Keane is without funds and has had to borrow money to try to carry forth and carry on this litigation. If I may give you some idea of the amount of stocks that we recovered and got into this trust——

The Court: Yes.

Mr. Langroise: Mr. Allen agreed in the contract and there was to be put into the trust, 525,000 shares of Consolidated Silver Lead, 125,000 shares of this was used in the settlement of one of the claims of the partners against the partnership of one of the other companies; there is now in the trust 400,000 shares of Coeur d'Alene Consolidated Silver Lead Mines, Inc.; 100,000 shares of Lucky Friday Extension. There was supposed to go into the trust, but which I believe has never been put into it, but Allen agreed to put into it, 100,000 shares of Hunter Creek Mining Company, 300,000

Pilot Silver Lead Mines, 400,000 shares of Alma Mining Company, 400,000 shares of Lexington Silver Lead Mines, Inc., 350,000 shares of Hunter Silver Lead Mines, Inc., 250,000 shares of Goldstone Mining Company, and 250,000 shares of War Eagle Silver Lead Mining Company. He also in the trust, under the agreement, and it was set forth in the trust, was to see that the \$25,000 which the Coeur d'Alene Consolidated Silver Lead Mines, Inc., owed to the partnership be immediately turned over by the Coeur d'Alene Consolidated Silver Lead Mines to the trustees for the purpose of application to the creditors of the partnership. He also undertook to have B. W. Porter, who owed the partnership, repay \$8,000.00 to the trustees for the purpose of carrying on or for distribution to the creditors. Those sums, however, were never in fact put into the trust. Of all of the stocks and all of the monies, if your Honor please, I believe there was 100,000 shares of Pilot that Keane had. All the others was stock that Allen had in his possession, as he had all of the companies in his possession, and the control of all of the companies.

So much for that phase of it, and I give that to you to indicate his good faith, his necessity, so far as the benefit of the public, that he be able to carry on and prosecute this litigation.

In addition to this, if your Honor please, when the S.E.C. first started making their investigation and Mr. Keane was contacted, I think they will bear me out in this, that anything that he has told them

has been true. I think they will bear out that he has given them cooperation, that he has not attempted in any manner to impede or hinder justice, that he has done everything that is within his power to assist and to try to make restitution and correct this situation.

It has been my opportunity to observe Mr. Keane during the course of the early part of this period. There was a great deal of the time, a big part of the time, that we found it very difficult, because of his then condition, to get any information from him, or for him to be of any assistance. I was able to determine this because of my close association. While it might not be so evident to others, it was most evident to me. Since that time Mr. Keane has been sent, or went, to a hospital where it was found that he was suffering very seriously from malnutrition. That condition has been partially and is being corrected. He has since been useful, been able to carry on his profession, and is now the useful citizen that he was when I knew him for many, many, many years before this started.

I don't want to go farther, as Judge Herman and Mr. Hunter will present others. I merely want to say to your Honor, and I say this with all sincerity, that if there ever was an incident where a man was entitled to consideration of the Court, where I believe, sincerely believe, for the best interests of everyone, I believe this is one.

Mr. Herman: May it please the Court; your Honor has told counsel that he has had the advantage of a conference with Judge Black. All I know

about what Judge Black said is what I read in the paper.

The Court: Pardon me; I also had a transcript from the court reporter here of Judge Black's remarks on the occasion of imposing sentence on the defendant Allen.

Mr. Herman: Fine. I want to say that Judge Black was quoted in the paper as saying he believed Mr. Keane told the truth and that the other defendant did not. I further noticed that Judge Black said that it was not his custom to grant probation where a man saw fit to gamble and lose by standing trial, and it just seems to me that the natural corollary of that would be that he would give very serious thought to probation in the event that a man came in and rendered what assistance he could to the United States Government and made a complete and a free and a frank disclosure. I noticed that the new Criminal Code has, according to a note from the reviser, made it clear that they wanted the power of probation extended, they've put in a sentence into the code that makes it clear that the courts of Hawaii and Alaska likewise have the power to grant probation. They have added a final paragraph to the code which provides that when a man complies with the terms of probation, that that shall be a complete termination of any further liability as punishment.

Now, I think that those two changes in the law should be given a very great consideration by your Honor. They mean what? They mean that Con-

gress has tried probation, that the Federal Judges have taken advantage of the right that Congress gave them to use the power of probation, and that Congress is so pleased with the result that they have seen fit to extend the powers of the trial judge to other jurisdictions than those to which the original text of the Act perhaps limited, and they have made clear that if the court used the power of probation, that at the expiration of five years that brought an end to all further liability.

Now, if your Honor please, you have had a far greater experience as a prosecutor than the limited experience that was mine; for a while before World War I I was a prosecutor, and for a short time after World War I, when I served as a prosecutor. I say that because of a conclusion that I came to during my experience, and that was this; that a man who had committed a wrong against society and then ultimately confessed, and then aided the state in seeking to convict others who perhaps were not quite so honest, or perhaps had not quite the degree of contrition that he possessed, it always seemed to me that he was rendering a public service by aiding the prosecutor. Now, the code provides that when in furtherance of justice and for the benefit of the public, as well as the defendant, the court finds it is fit and proper to give probation, that he shall do so.

It seems to me that the entire record of this man as related by Mr. Langroise is one which was a record of where, except for the time that he com-

mitted the original wrong, he has done all that he could to right it, and of course, if Congress didn't want consideration given to his conduct subsequent to the time the original wrong was committed, they probably wouldn't have put the provision in the statute that they have, and Mr. Munter and Mr. Langroise both know Mr. Keane a little longer than I have, but I know him well enough to do something that I have never, to the best of my knowledge, done before. Next month it will be 35 years since I started practicing in this court. I was always proud of my responsibilities as an officer of this court, which during that time has been presided over by Judge Rudkin, Judge Webster, Judge Schwellenbach and yourself, judges who have won far-flung acclaim for their fairness, their good sense, and their integrity, and when you serve as an officer in such a court you have to be careful about what you say, and you have to weigh your words when you talk to a judge, and for that reason I'm about to do something, as I say, that I've never done before. In all the criminal cases that I have tried in this court, never before have I told the court what I'm telling your Honor now, that I believe if your Honor will exercise the power which Congress in its wisdom conferred upon you, and grant probation, I think at the end of five years, when the time for the expiration of the probation period comes up, and forever afterward, your Honor will always be proud of the fact that he tempered justice with mercy and promoted the pub-

lie welfare and interests by exercising the power that Congress said he should; and so I leave to Mr. Munter the final chore of presenting just why we believe Mr. Keane should have probation.

Mr. Munter: If your Honor please, I feel that Judge Herman and Mr. Langroise have so fully presented the matters which we wished to call to your Honor's attention in connection with our request for probation in this case, that I don't really think there's anything I could add to what has been said. It's true, as Judge Herman said, I have known Mr. Keane longer than Judge Herman has, but not as long as Mr. Langroise has, and I think that the case itself, his course of conduct which Mr. Langroise set out to your Honor this morning, shows the innate honesty of the man. I think his integrity can't better be reflected than in what Judge Black said, as reported in the public print, I was not here at the time, that he believed what Mr. Keane testified to in the case which was tried before Judge Black.

It's apparent that here's a man that is worth saving; here's a man who has been a valuable citizen of his community, here's a man who has been a valuable addition to the bar of his state, and all of those things hang in the balance of what your Honor does here today. He has done everything, it seems, that could reasonably be expected of him in the way of making restitution for the situation which he in part created, and he is carrying that on in good faith; he has helped in every possible way, and I think that all of the govern-

ment officials who had contact with him are of the same opinion that I express to your Honor here, that the man did truthfully and honestly try to aid them, in all ways, in getting at the bottom of a very difficult situation. I'm not saying that they couldn't possibly have gotten to the bottom of it without the aid of our client, but certainly it was a real aid to them, and made possible actually getting this case in the situation that the government's case finally was, and there is of course the further situation that they must go ahead and see what action or money can be secured for those which suffer from the losses which were brought about. Under all the circumstances, fully realizing my responsibility as an officer of this court, I, along with my distinguished associates, ask your Honor to grant to this defendant here probation.

The Court: Let's see, will Mr. Grismer and Mr. Keane step forward, please? The attorneys may come forward if you wish.

Mr. Stocking: If the Court please, in view of your Honor's remarks about having read the record in the Allen case, I thought I should make one observation.

The Court: Yes, indeed.

Mr. Stocking: Naturally in the trial of the Allen case the defendant's attorneys attempted to try the defendant Keane, and in the course of doing so, there was an intimation, they intimated, at least, into the record, the fact that the defendant Keane was an eager witness, even going so far as to inti-

mate that he had some part in the running of the case or in the prosecution of the case. That was an effort, of course, to try him rather than the defendant Allen, and I just wanted to make this observation, that the defendant Keane did testify for the government, but he did so reluctantly. It was a hard thing for him to have to do, to be called in here and to give the kind of testimony that he was asked to give, and I thought in view of the fact that there was that intimation in the record, that I'd like to make that statement.

The Court: All right. I've given this, naturally a great deal of thought, and as I stated at the outset here, I've sought information wherever I could get information that would be helpful, and have spent a good deal of time on it. I note that in his remarks on the occasion of sentencing the defendant Allen, Judge Black made the remark that he thought so far as these operations were concerned, that there wasn't a great deal of difference in culpability between the defendant Allen and the defendant Keane. From my reading of the record, of course I appreciate the fact that is a little different than hearing the witnesses, from reading the record I think that statement might be questioned seriously, but I doubt that it's necessary for me to resolve it, because I think aside from culpability in the matter of the relations which led to the prosecution here, I think there's a substantial and important difference between the two defendants, and I think the Court should take that into consideration

in assessing the quantum of the punishment here.

In the first place, the defendant Keane has entered a plea of *nolo contendere*; he's not contending. He did that some time in advance of trial, and as has been pointed out here, he not only entered this plea, but also took the stand and testified for the government. Now, whether the government could have won the case without Mr. Keane or not I don't know. Certainly it was close and hotly contested, and the jury had some difficulty resolving it, and finally came out with a finding of guilty only on the conspiracy count, but at any rate, he gave his testimony. From the remarks which I understood Judge Black made, although it is not in the transcript, the one I received, he thought Mr. Keane had told the truth, substantially, on the witness stand, and Mr. Allen had not, and apparently the jury took that view of it, because if they had believed Mr. Allen they would have promptly returned a verdict of not guilty, so here I think we have a defendant not only gambling on the result, but taking the stand and giving what the presiding judge and the jury apparently considered was false testimony, which made him guilty of perjury as well as the other offense for which he was being tried.

In this matter I recall, in connection with Judge Black's remark with regard to gambling on the result of the jury, I recall I rather reluctantly permitted both of the defendants to enter pleas of *nolo contendere*, and that came about under the circum-

stances that developed, but I made it clear that it was my conception of the plea that it gave me full authority to impose any punishment up to the full maximum provided by the statute, including confinement, and after that very unequivocal declaration on my part, Mr. Keane permitted his plea to stand, and Mr. Allen withdrew his plea, and right here in this court room his attorney from Butte, I haven't his name in mind right now—Emigh—virtually asked the court if the plea of *nolo contendere* were to stand, there would be no confinement imposed, and I told him I wouldn't give him that assurance, that I wished to reserve the right to impose anything up to the full maximum; then he asked for the right to withdraw the plea and it was withdrawn, and the defendant Allen went to trial. I've said before, and I'll say it again, I haven't the slightest disposition to penalize any defendant for standing trial; that's not only his privilege, but his right under the American system, and I would never penalize a defendant because he had stood trial and was convicted in the process that we accord people accused of crime, but when it comes to the matter of grace, which clemency is when extended to a defendant convicted of an offense, when it comes to the matter of grace, then I think the Court can take into consideration that the defendant has shown a spirit of penitence by entering a plea, and that he's shown a disposition to try to make restitution for the wrong he's done by aiding the government in the prosecution of other defendants in the case.

Now, there was quite a bit said at one stage of this case about Mr. Keane having been drinking heavily at the time of these transactions which led up to the prosecution. I'm unable to say from the knowledge I have whether he drank because he was in trouble, or got in trouble because he drank, and that's very difficult to determine in most of these cases where this sort of thing occurs, but at any rate, I think there was periods of time when he was drinking so excessively as not to be in full possession of his faculties, and I think that was an element here, and while of course drinking doesn't excuse an offense, I think it's something the court can properly take into consideration in matters of this sort, and then without unduly prolonging this, I think a fact I should consider and did consider in permitting the plea to be entered here, we have a professional man, and it doesn't make any difference to me whether he is a doctor, lawyer, or any other profession, he depends upon his profession for his livelihood. A lawyer or a doctor or dentist who has taken away from him his power to practice his profession as a usual thing is destroyed so far as making a living is concerned, so I think that is a thing that the court may properly take into consideration.

I do think this is a situation where there should be some punishment. I know Mr. Keane isn't able to pay a fine at this time, but I'm going to impose one, and leave it to the probation officer to say how soon and in what amounts he must pay it. I don't want it to interfere with his reformation, and I'm

sure the probation officer will not permit it to do so, but I think he ought to feel the bite a little for what he's done. Of course, it has been a tremendous setback now, but without prolonging this further, upon the plea of *nolo contendere* of the defendant Keane, it is the judgment of the court that he is guilty of the offense charged in—now, let's see, as to him, all of the counts stand, do they not, Mr. Stocking?

Mr. Stocking: I think we had dismissed count six.

The Court: Yes, I have that situation in mind.

Mr. Stocking: That count was dismissed; it was re-instated as to the defendant Allen only.

The Court: Well, it is the judgment of the court that he is guilty of count 1 of the indictment in this case, and that he be punished by payment of a fine of \$1500.00. The imprisonment portion of the sentence, however, the imposition of any confinement under this sentence, will be stayed and suspended and the defendant will be placed on probation for a period of four years. In addition to the usual conditions of probation the court will impose these special ones, that he pay the \$1500.00 fine in such installments and at such times as he is able to do in the judgment of the probation officer, and that he refrain from drinking intoxicating liquor during the first two years of the probationary period. Now, the same sentence will be imposed as to counts 2, 3, 4, 5 and 7, the sentences to run concurrently under the same conditions.

Now, as to the defendant Grismer, as I intimated

before, Judge Black, the probation officer, and I think even the attorneys for the government will concede that he was sort of led into this, and didn't know just all of these manipulations that were going on, I think he was used, and got into an unfortunate situation here. Is there only one count remaining as to him?

Mr. Stocking: Count 7.

The Court: Upon his plea of nolo contendere, then, it is the judgment of the court that he is guilty of count 7 of this indictment, but the imposition of sentence will be stayed and suspended, and the defendant will be placed on probation for a period of two years. Is there anything else, then, gentlemen? Each of you, I assume, will see Mr. Swain, the probation officer, before you leave here today.

Mr. Hawkins: The bonds are released?

The Court: Yes; are each of these men out on bond?

Mr. Hawkins: Yes.

The Court: The bond of each of them will be exonerated.

Mr. Herman: Your Honor, Mr. Munter is always thinking about money matters; we'd better clear this up; the total fine is \$1500.00, and the term of probation runs concurrently?

The Court: Yes, I think I'd better clear that situation up. The court will impose a fine of \$1500.00 under count 1; under the other counts no fine will be imposed; the probation period will be four years, to run concurrently under all counts

of the indictment, but there's only one fine, a fine of \$1500.00 under count 1. I appreciate your calling that to my attention.

Reporter's Certificate

United States of America,
Eastern District of Washington—ss.

I, Stanley D. Taylor, do hereby certify: That I am the regularly appointed, qualified and acting official court reporter of the District Court of the United States in and for the Eastern District of Washington. That as such reporter I reported in shorthand and transcribed the foregoing proceedings before the Honorable Sam M. Driver, Judge of the District Court of the United States for the Eastern District of Washington, held on August 5, 1949, at Spokane, Washington. That the above and foregoing contains a full, true and correct transcript of the proceedings had therein.

Dated this 10th day of August, 1949.

STANLEY D. TAYLOR,
Official Court Reporter.

[Endorsed]: Filed Aug. 10, 1949.

United States District Court for the
Eastern District of Washington
No. C-7975

UNITED STATES OF AMERICA,

vs.

FRANCIS CLAYTON KEANE.

JUDGMENT AND ORDER OF PROBATION

On this 5th day of August, 1949, came the attorney for the government and the defendant appeared in person, and by his attorneys, Wm. H. Langroise, H. E. T. Herman and R. S. Munter.

It Is Adjudged that the defendant has been convicted upon his plea of nolo contendere of the offenses of Using the Mails to Defraud (Sec. 338, Title 18 U. S. C. A.), Fraud in Sale of Securities (Sec. 77(q) Title 15 U. S. C. A.) and Conspiracy (Sec. 88, Title 18 U. S. C. A.) as charged in Counts 1, 2, 3, 4, 5, and 7 of the Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that defendant pay a fine to the United States in the sum of \$1500.00 on Count 1, that no fine be imposed on Counts 2, 3, 4, 5, and 7, and that imposition of any imprisonment sentences

on all Counts, to-wit: Counts 1, 2, 3, 4, 5, and 7 of the Indictment be suspended and defendant placed on probation in the custody of the United States Probation Officer for a period of Four Years on each count, such periods of probation to run concurrently, upon the Special Condition, that he pay the fine imposed on Count 1, in such amounts and at such times as the Probation Officer shall direct, and the further special condition that he shall refrain from drinking intoxicating liquor for the first two years of his probation.

It Is Further Ordered that during the period of probation the defendant shall demean himself as a law-abiding, orderly, industrious citizen and observe such conditions of probation as the probation officer may prescribe. Otherwise the defendant may be brought before the court for a violation of the court's orders.

It Is Further Ordered that the clerk deliver two certified copies of this judgment and order to the probation officer of this court, one of which shall be delivered to the defendant by the probation officer.

SAM M. DRIVER,

U. S. District Judge.

[Endorsed]: Filed Aug. 5, 1949.

United States District Court for the
Eastern District of Washington
No. C-7975

UNITED STATES OF AMERICA,

vs.

JOSEPH VALENTINE GRISMER.

JUDGMENT AND ORDER OF PROBATION

On this 5th day of August, 1949, came the attorney for the government and the defendant appeared in person and by his counsel Wm. S. Hawkins.

It Is Adjudged that the defendant has been convicted upon his plea of nolo contendere of the offense of Conspiracy in violation of Sec. 88, Title 18 U. S. C. A. as charged in Count 7 of the Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that imposition of sentence be and hereby is suspended and defendant placed on probation in the custody of the United States Probation Officer for a period of Two Years.

It Is Further Ordered that during the period of probation the defendant shall demean himself as a law-abiding, orderly, industrious citizen and observe such conditions of probation as the probation officer may prescribe. Otherwise the defendant may be

brought before the court for violation of the court's orders.

It Is Further Ordered that the clerk deliver two certified copies of this judgment and order to the probation officer of this court, one of which shall be delivered to the defendant by the probation officer..

SAM M. DRIVER,
U. S. District Judge.

[Endorsed]: Filed Aug. 5, 1949.

[Title of Court and Cause.]

ORDER PERMITTING WITHDRAWAL AND
TRANSMITTAL OF ORIGINAL EXHIBITS

Upon application of R. Max Etter, Esq., of counsel for defendant and appellant James Anthony Allen in the above entitled action:

It Is Ordered that the Clerk of this Court be and he is hereby permitted to withdraw all of the original exhibits in said action and to certify and transmit the same as a part of the Transcript of the Record to the Clerk of the United States Court of Appeals for the Ninth Circuit.

Dated at Spokane, Washington, August 13th, 1949.

SAM M. DRIVER,
Judge.

Presented by:

R. MAX ETTER.

[Endorsed]: Filed Aug. 13, 1949.

[Title of Court and Cause.]

ORDER EXTENDING TIME FOR
FILING TRANSCRIPT

Good cause appearing therefor, now on motion of R. Max Etter, Esq., of counsel for defendant and appellant James Anthony Allen in the above entitled action:

It Is Hereby Ordered that the time for filing the Transcript of the Record in said action and docketing the cause in the United States Court of Appeals for the Ninth Circuit be and the same is hereby extended for a period not exceeding ninety (90) days from the date of filing Notice of Appeal of defendant and appellant Allen in said action, to-wit, July 25, 1949.

Dated at Spokane, Washington, August 13th, 1949.

SAM M. DRIVER,
Judge.

Presented by:

R. MAX ETTER.

[Endorsed]: Filed Aug. 13, 1949.

[Title of Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

To A. A. LaFramboise, Clerk of the District Court
aforesaid:

Defendant and appellant above named, James

Anthony Allen, hereby designates the following portions of the record, proceedings, and evidence to be contained in the record on appeal herein, to-wit:

Indictment.

Bail Bond of Defendant Allen in the sum of \$2,000, filed May 6, 1948.

Bail Bond of Defendant Allen in the sum of \$2,000, filed May 9, 1949.

Motion of Defendant Allen to dismiss Count VII of Indictment.

Motion of Defendant Keane to make Indictment more definite and certain, adopted by Defendant Allen on hearing of motions August 23, 1948.

Clerk's Memorandums of August 23, 1948, showing pleas of all defendants entered to Indictment.

Statements of Attorneys Herman, Langroise and Munter made to Court December 8, 1948, on withdrawal of plea of not guilty by defendant Keane and substitution of plea of nolo contendere to each of seven counts of indictment, as contained in stenographic notes filed December 10, 1948.

Stenographic notes of January 13, 1949, of proceedings on withdrawal of plea of not guilty by defendant Allen and substitution of plea of nolo contendere, filed January 31, 1949.

Stenographic notes of March 21, 1949, on withdrawal of plea of nolo contendere by defendant Allen and substitution of plea of not guilty by defendant Allen to all counts of Indictment, filed March 25, 1949.

Motion of defendant Allen to strike exhibits and testimony.

Defendant Allen's Requested Instructions Nos. 1 to 16 inclusive.

Motion of defendant Allen for judgment of acquittal at close of plaintiff's case.

Motion of Defendant Allen for judgment of acquittal at close of all the testimony of plaintiff and said defendant.

Verdict of Jury.

Motion of defendant Allen for judgment of acquittal or for new trial on Count VII of Indictment.

Motion of defendant Allen in arrest of judgment.

Judgment of Conviction of Allen on Count VII of Indictment.

Bail Bond of defendant Allen for \$15,000 pending determination of appeal.

Notice of Appeal.

Original Reporter's Transcript of Evidence or Proceedings on trial of defendant Allen, and court's statements on sentencing of Allen and Keane, properly certified by the Clerk, excluding closing arguments of Counsel to Jury, and examination of Jurors.

Original Exhibits.

Order permitting withdrawal and transmittal of original exhibits.

Journal Entries, including those made on August 5, 1949.

Judgment of Conviction of Defendant Keane.

Judgment of Conviction of Defendant Grismer.
Order extending time to file Transcript of Record
and docket cause in appellate court.

This designation of record on appeal and acknowl-
edgment of service.

Certificate of Clerk.

Dated August 12, 1949.

E. MAX ETTER,

J. F. EMIGH,

J. A. MURRAY,

THERRETT TOWLES,

WILLIAM E. CULLEN, JR.

Attorneys for Defendant and Appellant, James
Anthony Allen.

[Receipt of copy acknowledged.]

[Endorsed]: Filed Aug. 15, 1949.

[Title of Court and Cause.]

ORDER EXTENDING TIME FOR
FILING TRANSCRIPT

(Oct. 17, 1949)

Good cause appearing therefor, now on motion of R. Max Etter, Esq., of counsel for defendant and appellant James Anthony Allen in the above entitled action:

It Is Hereby Ordered that the time for filing the Transcript of the Record in said action and docketing the cause in the United States Court of Appeals for the Ninth Circuit be and the same is hereby extended for a period not exceeding thirty (30) days from the date of October 22, 1949, until November 21, 1949.

Dated at Spokane, Washington, October 17th, 1949.

SAM M. DRIVER,
Judge.

Presented by:

WM. E. CULLEN.

[Endorsed]: Filed October 17, 1949.

[Title of Court and Cause.]

ORDER EXTENDING TIME FOR
FILING TRANSCRIPT

(Nov. 15, 1949)

Good cause appearing therefor, now on motion of R. Max Etter, Esq., of counsel for defendant and

appellant James Anthony Allen in the above entitled action:

It Is Hereby Ordered that the time for filing the Transcript of the Record in said action and docketing the cause in the United States Court of Appeals for the Ninth Circuit be and the same is hereby extended for a period not exceeding thirty (30) days from the date of November 21, 1949, until December 21, 1949.

Dated at Yakima, Washington, November 15, 1949.

SAM M. DRIVER,
Judge.

Presented by:

R. MAX ETTER.

[Endorsed]: Filed November 15, 1949.

[Title of Court and Cause.]

SUPPLEMENTAL DESIGNATION OF
RECORD ON APPEAL

To A. L. LaFramboise, Clerk of the District Court
aforesaid:

Defendant and appellant above named, James Anthony Allen, hereby designates the following additional portions of the record, proceedings and evidence to be contained in the record on appeal herein, to-wit:

Motion of Defendant Keane to make indictment more definite and certain

Order on Keane's Motion for Bill of Particulars
Bill of Particulars

Dated December 12, 1949.

R. MAX ETTER,
WILLIAM E. CULLEN, JR.,
J. F. EMIGH,
J. A. MURRAY,
THERRETT TOWLES,

Attorneys for Defendant and Appellant, James
Anthony Allen.

Service of the foregoing Supplemental Designation of Record on Appeal, by receipt of a true copy thereof, is hereby accepted this 12th day of December, 1949.

HARVEY ERICKSON,
By L. WINDHAM,
Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 12, 1949.

In the District Court of the United States for the
Eastern District of Washington, Northern Di-
vision

No. C-7975

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES ANTHONY ALLEN, FRANCIS CLAY-
TON KEANE, and JOSEPH VALENTINE
GRISMER,

Defendants.

RECORD OF PROCEEDINGS AT THE TRIAL
OF JAMES ANTHONY ALLEN

Be It Remembered, that on the 6th day of June, 1949, the above entitled cause came regularly on for trial of the defendant James Anthony Allen in the above Court at Spokane, Washington, before the Honorable Lloyd L. Black, a Judge of said Court, sitting with a jury.

The plaintiff appearing by Harvey Erickson, United States Attorney for the Eastern District of Washington, of Spokane, Washington, and Donald J. Stocking, attorney for the Securities and Exchange Commission, of Seattle, Washington.

The defendant James Anthony Allen appearing personally and [60*] by his attorneys, R. Max Etter, William E. Cullen, Jr., and Therrett Towles, of

*Page numbering stamped at bottom of page of original Reporter's Transcript.

Spokane, Washington, J. F. Emigh, of Butte, Montana, and James A. Murray, Jr., of Los Angeles, California, and Washington, D. C. [61]

* * *

Mr. Erickson: May it please the Court, members of the jury: In order that you may have some preview and premonition of what this case is about, it will be my purpose to picture to you briefly just what the case is about, what the government expects to prove, and the order of proof which will be [74] introduced here in court for your consideration.

Now, as the court has told you, the grand jury for the Eastern District of Washington returned an indictment against the defendant James Anthony Allen, along with two others, Francis Clayton Keane and Joseph Valentine Grismer, whose cases you are not to consider. You are merely considering the case against James Anthony Allen in this trial.

The first count of the indictment is a description of what the charge is. It is called a mail fraud count. It is a charge of using the mails to perpetrate fraud. The charging part of the indictment as returned by the grand jury reads as follows:

“Prior to June 1, 1945, and continuing to the date of this indictment,” that was May 6, 1948, when the indictment was returned, “the defendants James Anthony Allen, Francis Clayton Keane, and Joseph Valentine Grismer, devised and intended to devise the following device, scheme and artifice to defraud purchasers and prospective purchasers of stock of Lucky Friday Extension Mining Company and Pilot

Silver Lead Mines, Inc., both Idaho corporations, said corporations hereinafter sometimes referred to as "Extension" and "Pilot" respectively, and said purchasers hereinafter sometimes referred to as investors, and to obtain money and property by means of false and fraudulent pretenses, representations and promises: That said defendants would and did promote and [75] organize Extension and Pilot and issue a large portion of the stock of these corporations to themselves, but would and did conceal the fact that defendant Allen was a promoter of these corporations or was to receive any part of the stock to be taken by defendants; that defendants in order to conceal the true amount of stock issued to them would and did cause large blocks of stock to be issued to Elmer E. Johnston of Spokane, Washington, and James E. Gyde of Wallace, Idaho, under the pretense that such stock was in payment of attorneys' fees, but with the secret arrangement that a portion of such stock or the proceeds from its sale would be turned back to defendants; that defendants would and did cause these corporations to sell stock to investors upon the representation that the proceeds therefrom would be used by these corporations for the exploration and development of the mining properties of Extension and Pilot respectively; that defendants would not maintain proper books and records of account, but would and did conceal from the stockholders of said corporations information concerning the receipt and expenditure of moneys of these corporations; that defendants would and did appropriate and divert from these corporations a large amount of such

corporate moneys to their own use and benefit; that further, defendants, in order to create an appearance of mining activity on the part of these corporations and to increase the market value of defendants' promotion stock of Extension and Pilot, would and did spend a small portion of the funds belonging to these corporations on the mining properties of Extension and Pilot, whereupon defendants would and did dispose of their promotion stock by selling it on the market to the investing public, without disclosing the fact that large amounts of the funds of these corporations had been appropriated and diverted to defendants' own use and benefit; and that defendants would and did defraud purchasers of stock of Extension and Pilot by means of deceptive, misleading, false and fraudulent pretenses, misrepresentations and promises, well knowing at the time that such pretenses, representations and promises were and would be false when made, including among others, and in addition to those heretofore specified and in the manner heretofore described, representations and promises: as to the use of the net proceeds to be received from the sale of Extension and Pilot stock by these corporations; as to the names of the promoters and persons in control of these corporations; as to the fact that the promoters would hold their stock for investment; as to the accounting safeguards which would insure the proper use of the funds of these corporations; and as to the amounts of stock issued to promoters and for legal services."

And then the second paragraph is:

“That on or about September 20, 1945, at Spokane, in the Northern Division of the Eastern District of Washington, and within the jurisdiction of this court, the defendants James [77] Anthony Allen, Francis Clayton Keane, and Joseph Valentine Grismer, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, did knowingly cause to be delivered by mail, according to the directions thereon, a certain letter addressed to E. J. Gibson & Co., 5 Wall Street, Spokane, Wash., said letter having theretofore on or about September 19, 1945, been placed or caused to be placed by the said defendants in an authorized depository for mail matter to be sent or delivered by the Post Office establishment of the United States according to the directions thereon; all of which acts of said defendants were against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided.”

That is the first count, which embodies the fraudulent scheme. The second count charges the same fraudulent scheme, but that a letter was mailed on June 13, 1946, and received thereafter by Ben Redfield, the broker in Spokane. The evidence will show that E. J. Gibson and Company are Spokane brokers, and sold a considerable portion of stock of both Pilot and Extension to the investing public, as did Ben Redfield, who is also a broker in the Radio Central Building in Spokane, Washington.

Count three charges the mailing of another letter to perpetrate the same scheme to defraud, to E. J. Gibson on May 25, 1946. The fourth count is a violation of the Securities [78] Act, using the mail for the sale of securities, fraud in the sale of securities, and the letter is charged to have been mailed on the 8th of August, 1945, to Edwin LaVigne & Company, who is a stockholder in Spokane, Washington.

Count 5 charges the same violation of the Securities Act, using the mails for the fraudulent sale of securities, the letter being mailed to E. J. Gibson on May 28, 1946. Count six charges a violation of the Securities Act, and the mailing of a letter to Edwin LaVigne on June 12, 1946.

The seventh count in the indictment is a conspiracy count charging the defendants with conspiring, combining, confederating and agreeing with one another to perpetrate these fraudulent schemes which are set forth in detail in count one, so that there are seven counts to this indictment, the first three are the charges of using the mails to perpetrate fraud, the second three counts are using the mails in violation of the Securities Act, and the selling of securities through fraudulent means, and the seventh count is a conspiracy count charging that all the defendants conspired to violate both the mail fraud statute and the Securities Act, by using the mails to sell and deliver the securities sold in pursuance of this fraudulent scheme which I have mentioned.

The elements of the fraud as set forth in the indictment are very few. I think there are six of them. The first element of fraud is the fact that Allen was a promoter was [79] concealed from the public. The evidence in this case will show that Allen was an actual promoter of both these companies, conceived in his own mind and in the mind of Clayton Keane, another of the defendants, but that his name was not used for the reason that in 1943, June, 1943, an injunction was obtained against Allen by the Securities and Exchange Commission of Seattle, Washington, prohibiting Allen from promoting or organizing any companies, and any company which he promoted or was engaged as an officer in the promotion of, could not sell securities and would be prohibited from the sale of securities, and that was the reason for concealing the fact that he was a promoter.

The second element of fraud is the concealing of the issuance of stock to Gyde and Johnston and the kick-back. The prospectuses will show that certain large amounts of stock were issued to James E. Gyde, a Wallace lawyer, and Elmer Johnston, a Spokane lawyer; that these statements in the prospectuses were untruthful, in that the amounts of stock that these two lawyers were to get were not set forth with truth and veracity, but that although these lawyers got this stock, they kicked back the major portion of it to the promoters of the company for sale, and they only got a small part of that which the prospectus said they would get. The pros-

pectus for each of these companies is a statement which the companies must file when they sell securities, telling [80] about the nature of the company, the financial structure, the officers, and what the company proposes to do, what the companies propose to do with the investors' money.

The third element of fraud is that the representation was made by these defendants that the proceeds would be used for Lucky Friday Extension and Pilot only. The evidence will show that although these representations were made in the prospectuses to the investors, that the great majority of the money raised by Lucky Friday Extension and Pilot Silver Lead was embezzled by the defendants, and the evidence will point conclusively to the defendant Allen being one of the primary embezzlers of this money; and the next statement of fraud is that the fact was concealed from the stockholders that the receipt and expenditure of monies of these corporations, and a lack of accounting safeguards—the statement was made in the prospectus that these stockholders would receive an accounting of the receipt and expenditures of the monies, and the proof will show a total lack of any accounting safeguards, and a very loose way of handling the money; in fact, no books were created, and the money was handled mostly in the form of cancelled checks, without any books being set up.

The fifth element of fraud is the embezzlement of corporate monies, which has previously been mentioned, and the sixth element of fraud is that

they did sell promotion stock to the investing public without disclosing the fact that the [81] previous embezzlements had been made.

Now, the Lucky Friday Extension Company was created first along about the summer of 1945. In January, 1946, the Pilot Silver Lead Company was formed, but the money was stolen and embezzled by the defendants just as fast as it was taken in by the companies. Now, they got certain large blocks of promotion stock, but when they sold their promotion stock, and when they sold the second offering of Lucky Friday Extension stock, the next year, there was one offering made right after the company was organized, and then one about six months later, no disclosure was made to the investing public in the prospectus or by any statement that any of this money had been taken, removed, embezzled or misappropriated from the company, whereas in truth and fact a large portion of the money had already been stolen or embezzled from the company.

Now, getting back to the Lucky Friday Extension Mining Company, it was incorporated in 1945. The promoters were listed as J. V. Grismer, William E. Mullan, and Glynn David Evans. William E. Mullan I believe is deceased; the other two are alive. The brief set-up of the stock is that the three incorporators were each given 100 shares, making a total of 300 shares; Grismer was issued 1,229,700 shares for certain mining claims which he turned over to the company; 300,000 shares was given to the defendant Keane as attorney's fees; 200,000 shares

was given to Elmer Johnston of Spokane as [82] attorney's fees, and Glynn Evans, one of the incorporators, was given 10,000 shares for services, William Mullan, deceased, was given 10,000 shares for services, and the first public offering was July 1, 1945; one million shares were sold to the public through these various brokerage houses which I mentioned a short time ago; that was sold to the public for twelve and a half cents a share, to net \$100,000, and it did net \$100,000, all that million shares were sold to the public. The next public offering was January, 1946, and 300,000 shares were sold. Then the price was thirty-two and a half cents per share; the 300,000 shares netted \$78,000. Well, that made a total, then, up to January, 1946, of 3,050,000 shares of stock being issued in the Lucky Friday Extension.

There remained 450,000 shares of treasury stock, and in October, 1947, Allen issued, or the board issued to Allen, or the board of directors, 400,000 shares to him at that time.

Now, as to the organization of this Lucky Friday Extension Mining Company, the evidence will show that Keane and Allen were the real promoters of this company, and the promotion of these companies was discussed first in the hotel in Wallace between Keane and Allen, and then others entered into the company. The chief bookkeeper, or the girl that handled the workings or the bookkeeping and the financial part of the company was Irene Vermillion, who will be a witness in this case, Mr. Keane's sec-

retary. She will testify as to the [83] exhibits, the checks and the records and so forth, and the evidence will further show that Mr. Allen, the defendant Allen, was active in preparing the prospectus, that he contacted Elmer Johnston, gave Johnston information as to material to put in the prospectus, that he was considered and known to be an actual promoter of this Lucky Friday Extension Company.

The Pilot Company, Pilot Silver Lead, was organized I believe in the early part of 1946, and that was the same set-up as the Pilot, there were 3,500,000 shares in each of these companies, and the incorporators were Glynn Evans, who was likewise an incorporator in the Lucky Friday Extension; Beatrice McLean is a stenographer or bookkeeper in Wallace that works in the Callahan Consolidated, and Irene Vermillion, the defendant Keane's stenographer or secretary. These two girls and Evans were the incorporators. They each received 100 shares, or 300 shares; 900,000 shares was given to the defendant Grismer for claims; 650,000 shares were given to Keane for the Cincinnati and Phelan mining claims; 50,000 shares to Elmer Johnston, Spokane lawyer, as attorney's fees, and 150,000 shares to Gyde for attorney's fees, and of course Gyde kicked back part of that stock later, as the same kick-back was worked in the Lucky Friday; 20,000 shares was given to Emeline Phelan; that left a total issued, before the public offering, of 1,770,300 shares. Then there was sold [84] at public offering one million shares at twelve and a half cents, the

same figure that the Lucky Friday Extension brought, to net 10 cents a share, or \$100,000. That made 2,770,300 shares issued through 1946. Then in August 7, 1947, they had a directors' meeting, and 25,000 shares were issued to William Mullan. October 9, 1947, 500,000 shares were issued to the defendant J. A. Allen, per the minutes of the directors' meeting on this October meeting.

Now, speaking about the embezzlements, the evidence will show that the total embezzlement of Lucky Friday Extension is as follows: \$113,000 of the embezzled funds of Lucky Friday Extension were given to or put in the bank account of Montana Leasing or Lexington Silver Lead between July 28, 1945, and May 17, 1946, a period of about ten months. The evidence will show that Montana Leasing, later Lexington Silver Lead, was a Montana corporation and operates near Neihart, in the northwest part of the State of Montana, and it's wholly removed and not remotely connected with the Pilot or the Extension, which are near Mullan, Idaho. \$10,000 was diverted to Delaware Mines on October 7, 1945. Now, the evidence will show that Keane and Allen, the defendants Keane and Allen, were the interested parties or the partners running Montana Leasing or Lexington Silver Lead where this money went. The two bank accounts will be brought in evidence here by the Securities and Exchange accountant, Mr. Denney, and it will show that as [85] soon as money was received from Lucky Friday Extension, it immediately appears and goes

into the Montana Leasing or Lexington Silver Lead account of this Montana mining operation.

The total embezzlements from Pilot Silver Lead show much the same story; \$61,300 went to Montana Leasing or Lexington Silver Lead between May 31, 1946, and August 23, 1946, a period of about three months; \$15,000 of the embezzled funds appeared in the Coeur d'Alene Consolidated account; \$10,000 to Independence Lead on June 25, 1946, and \$3,000 of the embezzled Pilot funds then went to Extension on July 8, 1946; \$1200.00 to the War Eagle Mining Company on June 28, 1946, and July 31, 1946; so I believe if I've added it correctly, the total embezzlements in Pilot are \$90,500. The total embezzlements from Lucky Friday Extension are \$123,000, and from Pilot, \$90,500, or approximately those figures. The exact figures will be given to you as the accountants testify.

Looking at it from another standpoint, as to the total amounts of money, the evidence will show that the investors paid for Lucky Friday Extension stock \$222,500. This figure of course includes the amount paid, plus the brokerage fees. The investors paid for Pilot Silver Lead \$125,000; the total amount raised was \$347,500. The evidence will likewise show that in the sale of the promotion stock to the public, \$145,000 was raised, or a total amount raised was \$492,500 on the stock of these two mining companies, and of the \$347,500, [86] \$69,500 was the underwriters' commission. The total embezzlements amounted to \$213,500, if these figures are correct.

Now, as to these mailings, the evidence will show that the defendant Allen did not himself mail one single letter. The mailings were accomplished by Irene Vermillion, Keane's secretary. The evidence will show that Allen and Keane directed her to perform the duties that she was told to perform in these mailings; that they understood that these public offerings were being made, that they understood that the mails would have to be used for these purposes, and gave her directions and instructions that she was to transmit the stock and letters of transmittal in this way.

The evidence will show that when Pilot Silver Lead was formed, the defendant Allen was one of the principal—was the principal promoter in the Pilot Silver Lead; he arranged with a woman, a lady from Wallace who is coming here to testify, Mrs. Emeline Phelan, who will testify that the preliminary arrangements were made by the defendant Allen who came to her house to buy these mining claims from her, and that she sold the claims to the defendant Allen and went up to his office and there transacted the business. Mr. Herrick, another witness coming from the state of California to testify, will tell the same story about the defendant Allen coming to him and making arrangements to buy claims from him that went into the Pilot group. The evidence from these two witnesses will [87] place the defendant Allen definitely in the promotion of the Pilot Silver Lead. The evidence from Keane, from Irene Vermillion, from Elmer Johnston, from

Arthur Lakes, and other witnesses will put the defendant Allen definitely in the promotion and organization of the Lucky Friday Extension Mining Company.

As to the defendant Allen signing any checks from the Pilot Silver Lead or the Lucky Friday Extension, I do not believe his name appears on a single, solitary check that he signed for any of these monies, but on August 7, 1945, the evidence will show that he went up and had a \$10,000 check to Delaware Mines made out to him, and he took that money and it appeared in the Delaware account. The evidence will show that Allen is an active partner in the Delaware Mines; also that on August 7, 1945, a \$5,000 check was made out by Irene Vermillion, the same as the \$10,000 check, and given to the defendant Allen, and Irene Vermillion put on the check stub, "given to J. A. Allen" and marked the date on it, initials "J.A.A." The evidence will show that these checks were made out on a check protector in the Callahan Consolidated office. The evidence will further show that defendant Keane was not in the town of Wallace that day, but was on a fishing trip up the St. Joe River which he attended with some of the directors of the Hecla Mining Company after a meeting in Spokane. The evidence will show that Allen was registered at the Samuels [88] Hotel in Wallace on that day of the handing of the checks to him by Irene Vermillion in her office.

Now, the individual witnesses that are coming

here to testify, Irene Vermillion, as I told you, has the company records, has the cancelled checks. By the way, the company didn't keep books. The books had to be entirely reconstructed, or constructed, by Mr. Denney, the accountant of the Securities and Exchange Commission, who will be a witness here in court and testify what he did to make the investigation of the affairs of the company, the affairs were such that nothing could be made out of them, and the evidence will show that Irene Vermillion acted under the directions of Keane and Allen and that they never specifically gave her directions and always postponed the setting up of the books and the corporate records of the company. She will identify the monies received by both the Pilot and the Extension, trace the monies into their bank accounts. She will trace the outgo of monies into the Lexington Silver Lead or the Montana Leasing, the Montana properties, and she will put in evidence or identify for evidence the necessary paper documents.

Mr. Denney, the accountant for the Securities & Exchange Commission, from the documents given him by Irene Vermillion has prepared schedules for your understanding which will be offered at the appropriate time to help you trace this stock [89] and the monies from these promotions, and how they were spent, and what happened to them. The witnesses, the stockbrokers from Spokane will appear and identify the letters and tell about their part in the transactions, and I'll not detail that to

you because that testimony is brief and will properly come from them when they get here to testify.

The government in this case will call the defendant Keane as a witness, who will first admit his part of the embezzlement, and will tell that he has appropriated and taken a large portion of this money, and he will tell about his acquaintanceship with Allen, their working together in the company; that the purpose of starting the Pilot Silver Lead and the Lucky Friday Extension was to get money, get promotion money so that they could take it over and use it at their property at Neihart, Montana, the Montana Leasing and Lexington Silver Lead. The defendant Keane will further testify as to the expenditure of this money. Some went to the Montana Leasing, the great majority of it went to Montana Leasing or Lexington. Much of the monies from the Montana corporation went into Allen's personal account, some for hotels, and cash, and grocery bills, and life insurance, and gambling, even a check in there to the Spokane Racing Association on these Lexington funds.

The evidence will further show that Allen and Keane are not now good friends, but at the time were very close friends, [90] worked in concert and together in the operation of these companies. They have since had a falling out, and are not on the best of terms at the present time.

The government will also call the defendant Joe Grismer in this case, who will admit that he was an incorporator of the Lucky Friday Extension Mining

Company, president of the company. The evidence will further show that Mr. Grismer is a man of limited education, a practical miner. He will tell about the activities of Mr. Allen, the defendant Allen, in the promotion of these companies, and the disposition of his stock, how Allen sold his promotion stock, or the stock that was issued to him.

The defendant Grismer and the defendant Keane's cases have been disposed of, and you are not to consider them. Their testimony will be before you as other witnesses in the case.

The Court: What is the defendant's desire as to an opening statement at this time?

Mr. Emigh: The defendant will reserve the opening statement until the close of the government's case.

The Court: All right. The government may call its first witness.

Mr. Stocking: Call Irene Vermillion. [91]

IRENE VERMILLION

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Stocking:

Q. Will you state your name, please?

A. Irene Vermillion.

Q. And where do you reside?

A. Wallace, Idaho.

Q. Are you married? A. Yes.

(Testimony of Irene Vermillion.)

Q. What is your husband's name?

A. Joe Vermillion.

Q. And where is he employed?

A. He works for the Idaho Lumber Company.

Q. Do you have any family, Mrs. Vermillion?

A. We have two boys, one 10, one almost 13.

Q. How long have you resided in the vicinity of Wallace, Idaho? A. Practically all my life.

Q. What is your present occupation?

A. I'm secretary to the law firm of Keane & McCann, and court reporter for Judge Featherstone in the District Court at Wallace.

Q. And by Keane, you're referring to F. Clayton Keane, who is named as one of the defendants in this action? A. Yes. [92]

Q. How long have you been the secretary to Mr. Keane? A. Since May 1, 1944.

Q. And how long have you been acting as a court reporter for Judge Featherstone?

A. Since June 1, 1945.

Q. Are you familiar with the corporation known as the Lucky Friday Extension Mining Company?

A. Yes.

Q. And where did you hear of that company?

A. The Articles of Incorporation were drawn in Mr. Keane's office, and——

Q. Were you employed there at that time?

A. Yes, I was.

Q. And do you know who the organizers of that company were?

(Testimony of Irene Vermillion.)

Mr. Emigh: We object as calling for a conclusion of the witness; the Articles of Incorporation are the best evidence.

Mr. Stocking: She can state if she knows.

The Court: She may first state if she knows.

A. I don't know whether I understand just exactly.

Q. Do you know the names of the persons who were the organizers of that company?

A. Do you mean the incorporators, is that what you mean?

Q. Yes.

A. There were so many companies I'm afraid to say and not be [93] sure unless I had the Articles to look at; I think it was Mr. Grismer and Mr. Evans and Mr. Mullan. I may be wrong in that. I think that's right.

Q. And were you present when there was some discussion of the organization of this company?

A. I was present when the Articles of Incorporation were drawn, and——

Q. Who else was present at that time?

A. I don't remember just exactly if Mr. Keane and Mr. Allen were both there at the time they were dictated, but I know that Mr. Allen and Mr. Keane both were there after they were typed, and they were read by both of them.

Q. And approximately when was that, what month and year?

A. Oh, let's see; I can't remember whether those

(Testimony of Irene Vermillion.)

were typed up in June, either the last of May or June in 1946, or perhaps the first part of July.

Q. Now, this is the Extension Company, correcting the date there, 1946?

A. '45, I'm sorry.

Q. You're definite about that date?

A. Yes; I'm not definite about the month. It was sometime in the spring that they were drawn up.

Q. And who prepared the Articles of Incorporation, who typed them? A. I typed them.

Q. Now, were you employed by this corporation, or did you have a position in this corporation, the Extension Company?

A. I wasn't employed in the sense of receiving a salary, if that's what you mean. I acted as more or less assistant secretary, just opening the mail and giving the lists of the stock to Mr. Evans, or turning the stock over to him that came in registered, and so on.

Q. And who is Mr. Evans?

A. He was Mr. Glynn Evans, who did the stock transfers and who was also one of the incorporators.

Q. And who made the arrangements with you to do this work for this company?

A. Mr. Keane and Mr. Allen.

Q. And what were your duties besides opening the mail and taking out the—did you say the checks?

A. That's right; I said the lists of people who were purchasing stock.

(Testimony of Irene Vermillion.)

Q. Yes, and this was in connection with an offering of the stock which was made, is that correct? A. That's right.

Q. What other duties did you have in connection with the functions of this company, the Extension Company?

A. Well, as far as the Extension was concerned, I didn't do the original issue or the original offer, I didn't work on that, with the exception of, oh, occasionally Mr. Allen [95] would call, and I think that this is after the original issue, he would call and have me issue so much stock out of certificates that they had, and I would send them to them, or he would pick them up, or occasionally Mr. Keane would have me issue a few certificates. Mr. Evans did all the actual work of making out the certificates.

Q. Mr. Evans did that?

A. That's right.

Q. And with reference to the checks which were received, do you know who banked those checks?

A. I believe I banked all the checks in the Extension.

(Whereupon, Checks from Gibson & Co. were marked Plaintiff's Exhibit No. 1 for identification.)

(Whereupon, Checks from LaVigne were marked Plaintiff's Exhibit No. 2 for identification.)

(Testimony of Irene Vermillion.)

(Whereupon, checks from Pennaluna were marked Plaintiff's Exhibit No. 3 for identification.)

Q. I'll hand you what has been marked Plaintiff's identification number 1, consisting of a number of checks, and ask you if you can identify those?

A. These were the checks received from the E. J. Gibson Company——

Mr. Emigh: Just a minute; we'll object to that as not responsive to the question. The checks speak for themselves. [96]

Q. Can you identify them, yes or no?

A. Yes, I can. Sorry.

Q. And are these the checks that you referred to previously in your testimony as coming to you through the mail?

A. Part of them, yes. I mean there were others, by that answer.

Q. Yes, and are these part of the checks that you referred to as having banked? A. Yes.

Q. And that was in what account?

A. In the Lucky Friday Extension Mining Company account.

Q. I'll hand you what has been marked for identification Plaintiff's exhibit number 2, and ask you if you can identify those? A. Yes.

Q. And are those also some of the checks which you referred to as having come from the brokers' offices? A. Yes.

(Testimony of Irene Vermillion.)

Q. And I also hand you another bundle of checks which has been marked as Plaintiff's exhibit number 3, and ask you if you can identify those checks?

A. Yes.

Q. Have you—did you examine the endorsements on those checks? A. I did. [97]

Q. And whose endorsement appears on the back of each of those checks in exhibit 1, 2, and 3, if you know?

Mr. Emigh: We think the checks are the best evidence of the endorsements.

The Court: Oh, she may say.

A. Mine.

Mr. Emigh: Exception.

Q. That's your own endorsement, "Irene Vermillion"? A. Yes.

Q. And at whose direction were you acting when you received those checks and endorsed them?

Mr. Emigh: Just a minute; we'll object to that as calling for a conclusion of the witness, in the first place, proper foundation has not been laid in the second place, and if these directions were not given in the presence of the defendant Allen, it would constitute hearsay. No conspiracy has yet been established, and the directions of another alleged co-conspirator would not be now admissible.

The Court: Well, the rule of order as to conspiracy is substantially subject to the Court's discretion. The building can't all be built at once;

(Testimony of Irene Vermillion.)

a brick at a time must be laid. I will overrule the objection.

Mr. Emigh: May we have an exception?

The Court: Exception noted. You may read the [98] question.

(Whereupon, the reporter read the last previous question.)

A. Mr. Keane and Mr. Allen.

Q. And by that, you're referring to the defendant Allen here, and your employer Clayton Keane, who is also a defendant in this action?

A. Yes.

(Whereupon, deposit slips of Extension Company were marked Plaintiff's Exhibit No. 4 for identification.)

Q. Now, I'll hand you what has been marked for identification Plaintiff's exhibit number 4, and ask you if you can identify that exhibit?

A. Yes.

Q. And who prepared that exhibit?

A. You mean who prepared these slips?

Q. Yes.

A. With the exception of one, I believe I prepared them.

Q. They were prepared by you? A. Yes.

Q. And at whose direction were they prepared by you? A. Mr. Keane and Mr. Allen.

Q. And were they prepared on or about the dates that appear on each individual slip? [99]

(Testimony of Irene Vermillion.)

A. Yes.

Q. And at the time that you prepared those slips did you bank the—did you present the slips with the items shown thereon to the banks——

A. Yes.

Q. ——to the bank, and make a deposit therein?

A. Yes.

Q. What was the name of that bank?

A. Idaho First National, Wallace Branch.

(Whereupon, check stubs of Extension Company were marked Plaintiff's Exhibit No. 5 for identification.)

Q. I'll hand you what has been marked for identification Plaintiff's exhibit 5, and ask you if you can identify that, please? A. Yes.

Q. And who prepared the information that is contained in that exhibit? A. I did.

Q. And at whose direction were you acting when you prepared that exhibit?

A. Mr. Keane and Mr. Allen.

Q. And were the notations made thereon on or about the dates which appear on the stubs?

A. Yes. [100]

Q. And does that exhibit also pertain to the Lucky Friday Extension Mining Company?

A. Yes.

(Whereupon, checks drawn on Extension Company were marked Plaintiff's Exhibit No. 6 for identification.)

(Testimony of Irene Vermillion.)

Q. I'll hand you what has been marked for identification Plaintiff's exhibit 6, consisting of a number of checks, and ask you if you can identify that exhibit?

A. Yes.

Q. And who prepared those checks that appear in that exhibit, Exhibit 6?

A. Why, I believe most were prepared by myself. There may have been one or two that weren't?

Q. And what signatures appear on those checks that are contained in that exhibit?

A. Irene Vermillion, and F. C. Keane.

Q. And did you sign those on which the name "Irene Vermillion" appears?

A. I did.

Q. And did you sign any of those on which the name "F. C. Keane" appears?

A. Some of them.

Q. And at whose direction did you sign those?

A. Mr. Keane and Mr. Allen. [101]

Q. And did the checks for the most part which appear—the numbered checks which appear in Exhibit 6, did they come from the check book which is Exhibit 5, of which Exhibit 5 is the check stub?

A. Yes. [102]

* * *

(Whereupon, at 4:30 o'clock p.m., the Court took a recess in this cause until Tuesday, June 7, 1949, at 10 o'clock a.m.)

Spokane, Washington, Tuesday, June 7, 1949.

10:00 o'Clock A.M.

(Second day of trial)

(Testimony of Irene Vermillion.)

(All parties present as before, and the trial was resumed.)

* * *

(Whereupon, the following proceedings were had within the presence of the jury and two alternate jurors.)

IRENE VERMILLION

a witness called on behalf of the plaintiff, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Stocking:

Q. Mrs. Vermillion, when we adjourned yesterday afternoon you had just completed identifying these first six exhibits, that is, stating that you could identify them. Now, will you kindly refer to those exhibits which have [103] been marked Plaintiff's 1 to 6 for identification, and state what each exhibit is, please?

Mr. Emigh: May it please the Court, at this time I would like to make a general objection here, a general and specific objection to these exhibits, with the understanding the objection will go to further exhibits similarly identified, to save a lot of interruption of the Court. The defendant objects to the exhibits 1 to 6, inclusive, which are now offered in evidence or offered for further identification, and to all similar documents and exhibits identified in the manner in which these exhibits have

(Testimony of Irene Vermillion.)

been identified, that for the purpose of this case they're incompetent, irrelevant and immaterial, a proper foundation has not been laid in this respect, that the exhibits do not appear to be in the handwriting of the defendant, nor to have thereon endorsed the signature of the defendant; that the state of the record is such that the responsibility of the defendant or the connection with these exhibits of the defendant has not been shown; that as to the defendant, in the present state of the record, all these exhibits are hearsay; that the evidence is insufficient to establish a conspiracy and to make these exhibits competent on the theory of an act of the co-conspirator.

Mr. Stocking: I would say I haven't offered them yet, but I will offer them so that his objection can go to [104] my offer.

The Court: Well, are you offering them now?

Mr. Stocking: I was going to have them identified first, and then offer them.

The Court: Let me hear this particular question. Wait until Mr. Emigh is finished.

Mr. Emigh: I just at the suggestion of counsel wish to add the further important point, that the exhibits leave the jury to surmise and speculation in respect to their competency and effect. The purpose of this, your Honor, is I would like this objection to similar exhibits under the same circumstances, and may renew it by simply making the same objection that has been made in respect to

(Testimony of Irene Vermillion.)

Exhibits 1 to 6, inclusive, and it will save a great deal of time of the Court if we can do that.

The Court: Well, counsel, if at each time you will make your objection, you will actually note it, and then say that you're referring to this objection, that will be satisfactory. I had assumed from what you said in the beginning that you would not make any objection to further exhibits, and that I was to understand that you were objecting, and I couldn't agree to that, because I'd never know.

Mr. Emigh: That's right.

The Court: These have not yet been offered. I know your view. Would you read the last question, please, or the only question, Mr. Taylor?

(Whereupon, the reporter read the last previous question.)

A. (Witness): Exhibit 1 are the checks from E. J. Gibson Company covering the original offering of the Lucky Friday Extension—

Mr. Emigh: Now, just a minute. As to what they cover, we will object to that, as the check is the best evidence.

The Court: Overruled.

Mr. Emigh: Exception.

The Court: Noted.

A. Exhibit 2 are the checks received from Edwin LaVigne and Company—

Mr. Emigh: Same objection.

A. —to the Lucky Friday Extension.

(Testimony of Irene Vermillion.)

Mr. Emigh: May my objection go to these six exhibits?

The Court: You may have that objection to these six, on the same ground.

Mr. Emigh: And exception.

A. (Witness): Exhibit number 3 is checks received from Pennaluna and Company to the Lucky Friday Extension for the original issue. Exhibit number 4, duplicate deposit [106] slips to the Idaho First National Bank for the credit of Lucky Friday Extension. Exhibit number 5 are the stubs of Lucky Friday Extension checks. Exhibit 6 are the Lucky Friday Extension checks which were written on the Lucky Friday account.

Q. (By Mr. Stocking): And exhibits number 1 to 3, those checks bear your endorsement, do they not? A. Yes.

Mr. Stocking: I'll offer exhibits 1, 2 and 3 in evidence.

Mr. Emigh: To which, may it please the Court, the objection which I made a few moments ago is now made to the offer of those exhibits, when I made the objection to 1 to 6 inclusive.

The Court: I will take under advisement the admissibility of these six exhibits, on the present state of the record. Ruling is reserved.

Q. And Exhibit 6 were checks which were prepared by you, as you testified, under the direction of Keane and Allen? A. Yes.

Q. And Exhibit 4 is the bank deposit slips,

(Testimony of Irene Vermillion.)

whereby the money was deposited in the bank, and the deposit slips were made under your direction or by you, is that correct?

A. Well, there's one that was made at the bank, but the rest I believe were all made by myself. [107]

Q. You kept those as an employee of the company, in the regular course of business for the Extension Company? A. Yes.

Q. And Exhibit 5 is the check stub book which was made by you, is that correct, prepared by you?

A. Yes.

Q. In your regular course of employment?

A. Yes.

Mr. Stocking: I will now offer exhibits 4, 5 and 6 in evidence.

Mr. Emigh: As to the exhibits 4, 5 and 6, the defendant objects on the grounds heretofore stated as to exhibits 1 to 6 inclusive and the exhibits 1, 2 and 3.

The Court: Ruling is reserved.

(Whereupon, bank statements of Extension Company were marked Plaintiff's Exhibit No. 7 for identification.)

Q. I hand you plaintiff's exhibit for identification number 7, and ask if you can identify that, please? A. Yes.

Q. And what is it?

A. These are the bank statements of the Lucky Friday Extension Mining Company.

(Testimony of Irene Vermillion.)

Q. And those came to you in the regular course of your employment by the Extension Company?

A. Yes.

Q. Did you check those checks in Exhibit 6 against the bank statement, Exhibit 7, every month?

A. Yes.

Mr. Stocking: I'll offer Exhibit 7 in evidence.

Mr. Emigh: To which we object on the grounds and for the reasons that the same has not been shown to have any connection with the defendant Allen in any respect, and Allen has not been shown to have any access to them or any connection therewith, and in addition to that, the objection made to Exhibits 1 to 6 will be added.

The Court: On the present state of the record ruling is reserved as to Exhibit 7.

Mr. Stocking: Mr. Clerk, I'd like to extract checks number 8 and 9 from exhibit 6, and have them marked, check number 8 marked Exhibit 6-a, and check number 9 marked Exhibit 6-b.

(Whereupon, check #8 Extension Company was marked Plaintiff's Exhibit No. 6-a for identification.)

(Whereupon, check #9 Extension Company was marked Plaintiff's Exhibit No. 6-b for identification.)

Q. Handing you exhibits marked 6-a and 6-b for identification, which are a part of Exhibit 6,

(Testimony of Irene Vermillion.)

I will ask you if you can identify those checks as to when they were issued by you? [109]

A. These checks weren't issued by me.

Q. They bear your signature, do they not?

A. Yes.

Q. And when did you put your signature on these checks? A. Mr. Allen came into the——

Mr. Emigh: Just a minute; objected to as not responsive to the question.

Q. When?

A. August; sometime in August, probably the 7th or 8th.

Q. Of what year? A. 1945.

Q. And what was the condition of those checks after you had placed your signature on them? Had you filled in the remainder of the check?

A. No.

Q. So that you signed them in blank?

A. Yes.

Q. And at whose request did you do that?

A. Mr. Allen.

Q. That's the defendant James Allen?

A. Yes.

Q. And where did this take place?

A. In Mr. Keane's office; that is, he asked me to give him two checks.

Q. Mr. Allen asked you? [110] A. Yes.

Q. And asked you to sign them in blank?

A. Yes.

Mr. Stocking: Now, I'll ask that the third page of Exhibit 5 be marked Exhibit 5-a.

(Testimony of Irene Vermillion.)

(Whereupon, a page of Exhibit 5 was marked Plaintiff's Exhibit 5-a for identification.)

Q. Referring now to the third page of Exhibit 5, which has been marked Exhibit 5-a for identification, what notation did you make on the check stub with respect to these checks which you have identified as Exhibits 6-a and 6-b?

Mr. Emigh: Objected to, as the exhibit is the best evidence.

The Court: Overruled.

A. "To J.A.A." on stub number 8, and "To J.A.A." on stub number 9, in pencil.

Mr. Emigh: Exception.

Mr. Stocking: These particular exhibits are part of the exhibits which have been offered, but I'll re-offer Exhibits 6-a, 6-b, and 5-a.

Mr. Emigh: To which we object as incompetent, irrelevant and immaterial.

The Court: 6-a and 6-b are the checks?

Mr. Stocking: Yes.

Mr. Emigh: Incompetent, irrelevant and immaterial, [111] and a proper foundation has not been laid.

The Court: The Court will take under advisement and reserve ruling as to the admission of Exhibit 5-a for identification. Exhibits 6-a and 6-b, being the checks which were from Exhibit 6 for identification——

Mr. Stocking: Yes.

The Court: ——are offered, are admitted.

(Testimony of Irene Vermillion.)

(Whereupon, Plaintiff's Exhibits No. 6-a and 6-b for identification were admitted in evidence.)

Mr. Emigh: I wanted to add that they are not shown to be in the same condition that they were at the time that she last saw them.

The Court: I recognize that.

Mr. Emigh: The proper foundation has not been laid. Exception.

Q. (By Mr. Stocking): All right; now, where did you make delivery of these checks signed in blank, Exhibits 6-a and 6-b?

A. In the Callahan Consolidated office.

Q. And to whom did you deliver them there?

A. To Mr. Allen.

Q. And who else did you see in the Callahan Consolidated office at that time?

A. Mrs. French.

Q. That's Beatrice McLean French?

A. Yes. [112]

Q. And what is her capacity in the Callahan office?

A. Secretary to the Callahan Consolidated.

Q. Whereabouts did you see her—

The Court: Secretary of what?

A. Callahan Consolidated Mines.

Q. Where is that office located in relation to Mr. Keane's office? A. Oh, it's down the hall.

Q. In the same building, the Gyde-Taylor Building in Wallace? A. Yes.

(Testimony of Irene Vermillion.)

Q. And where was Mr. Allen standing when you delivered the checks?

A. He was standing by Mrs. French, and when I came in the door he walked over and met me, and I handed him the checks.

Q. And he had previously requested that you——

Mr. Emigh: Just a minute; leading and suggestive.

Q. Yes, I'll strike that. And this had followed his previous request to you?

Mr. Emigh: Same objection; objected to as leading and suggestive, not supported by the evidence.

The Court: Well, on the ground it's not supported by the evidence I'll overrule the objection.

Mr. Emigh: Exception.

The Court: It's repetitious. [113]

Q. (By Mr. Stocking): I'll ask you this——

The Court: If the objection is made on that ground I'll sustain it.

Mr. Etter: Object to it as repetitious.

The Court: All right; sustain the objection.

Q. The request for the checks had been made where?

Mr. Etter: That's repetition too.

The Court: Overruled.

Mr. Etter: Exception.

A. In Mr. Keane's office.

Q. And how soon thereafter was delivery made in the Callahan Consolidated office?

A. Oh, probably five minutes, as soon as I could

(Testimony of Irene Vermillion.)

get the check book out and sign my name and bring it in.

Q. And did Mr. Allen make any other statement to you at that time with regard to his purpose in taking these checks?

Mr. Etter: Leading and suggestive likewise; object to it on that ground.

The Court: Overruled. Say, counsel, there is the general rule, which is very wise, that the counsel who is examining or cross-examining a witness, or expects to, is the one who should make objections. If I have to consider objections by two or three counsel with respect to the same witness I will have much difficulty, so if Mr. Emigh is going to cross-examine the witness, I suggest that he [114] make the objections.

Mr. Emigh: I'll make that objection, your Honor.

The Court: All right; to a degree I acquiesce in the original objection by Mr. Etter, and there isn't anything in my present suggestion other than the desire to avoid confusion. All right; you make the objection that Mr. Etter voiced?

Mr. Emigh: I do. I make the objection stated by counsel.

The Court: Let me hear it, Mr. Taylor.

(Whereupon, the reporter read the objection stated by Mr. Etter, as follows: "Leading and suggestive likewise; object to it on that ground.")

(Testimony of Irene Vermillion.)

The Court: No, I mean Mr. Etter's objection.

The Reporter: That's the objection I read, your Honor.

The Court: I don't know what it means, so Mr. Emigh may make the objection.

Mr. Emigh: I think that's the way the record stands, your Honor.

Mr. Stocking: I'll reframe the question so he can make his objection.

Q. Did he ever have any other conversation with you about these checks, about his purpose in taking these checks?

Mr. Emigh: Objected to as leading and suggestive, [115] the nature of the conversation.

The Court: Overruled.

A. Mr. Allen asked me for the checks, and I asked him what I should put on the stub, and he told me he would give me the information later.

Q. Did he give you this information later?

A. No.

Q. And when was the next time you saw these checks?

A. When they cleared the bank and I received the bank statement.

Q. Were these checks prepared on your typewriter, Mrs. Vermillion? A. No.

Q. Are you familiar with the check protector which appears on these checks?

A. I am familiar with one which seems to be a—

(Testimony of Irene Vermillion.)

Mr. Emigh: Just a moment; are you qualifying her as an expert on handwriting or typewriting?

Q. I haven't qualified her as that. I asked if she was familiar with the check protector stamp which appears on these checks. A. Yes.

Q. And do you know what stamp that is, or where that stamp is located?

Mr. Emigh: Just a minute. Before this witness answers [116] this question, we would ask, for the protection of the defendant, to cross-examine her as to her knowledge of stamps.

The Court: All right, you may.

Voir Dire Examination

By Mr. Emigh:

Q. Mrs. Vermillion, what kind of a check protector was this stamp put on with, what make?

A. I don't know.

Q. You don't know? A. No.

Q. Do you know how many of that kind of check protector are in Wallace, Idaho? A. No.

Q. Do you know where that was put on this check? A. No.

Q. You can't state from observing that, then, what check protector was used in putting that stamp on there? Answer yes or no. A. No.

Mr. Emigh: That's all. We'll object to the question on the ground that the witness doesn't appear qualified to testify as to the fact sought to be elicited.

(Testimony of Irene Vermillion.)

Mr. Stocking: I'll refer these checks to the jury, if the Court please.

The Court: Let me hear the last question. [117]

(Whereupon, the reporter read the last previous question propounded by Mr. Stocking.)

The Court: No, I mean the question put by Mr. Stocking.

The Reporter: That is the question put by Mr. Stocking.

The Court: Well, that's a double question, and is confusing to me. I'll sustain the objection.

Mr. Stocking: I'll have other questions. Check number 8, the Lucky Friday Extension Company check, Wallace, Idaho, August 7, 1945, is "Pay to the order of Delaware Mines Corporation, \$10,000," and it's signed Lucky Friday Extension Mining Company, Irene Vermillion, and the check protector appears in the second line of the check, "The sum Ten Thousand Dollars 00 cents" drawn on the Idaho First National Bank of Wallace, Idaho, marked "For deposit only" on the back, and bears the bank stamp "Credited to the account of the within named payee" and so forth. Check number 9 is Lucky Friday Extension Mining Company check dated August 28, 1945, and it's drawn to the Montana Leasing Company, \$5,000. The check protector shows the sum of Five Thousand Dollars and no cents; it's also signed by Irene Vermillion, Lucky Friday Extension Mining Company, drawn on the

(Testimony of Irene Vermillion.)

same bank as check number 8, and bearing the same endorsement on the back, "For deposit only" and "to [118] the account of the within named payee."

Direct Examination

(Continued)

By Mr. Stocking:

Q. Mrs. Vermilion, you are familiar with the checks that appear in the plaintiff's Exhibit 6, which has been offered in evidence here, and can you tell me whether or not there are other checks than check number 9 which were drawn to Montana Leasing Company which appear in this exhibit?

Mr. Emigh: I think the checks are the best evidence. We'll make that objection, and that the proper procedure is to single out those checks, and not make it by way of examination.

The Court: Overruled.

Mr. Emigh: Exception.

Q. Answer the question.

A. Yes, there are.

Q. And under whose direction were those checks drawn to Montana Leasing Company?

A. Mr. Keane and Mr. Allen.

Q. And were you familiar with the records of the Montana Leasing Company? A. Yes.

Q. Were they maintained in your office?

A. Yes.

(Whereupon, folder containing [119] bank statements and cancelled checks was marked Plaintiff's Exhibit No. 8 for identification, and

(Testimony of Irene Vermillion.)

bank statements and cancelled checks of Montana Leasing Company and Lexington Silver Lead Co. for various months were marked Plaintiff's Exhibits No. 8-a to 8-o inclusive.)

(Whereupon, bank deposit slips of Montana Leasing Company and Lexington Silver Lead Co. were marked Plaintiff's Exhibit No. 9 for identification.)

Q. Mrs. Vermillion, I'll hand you exhibits marked for identification 8-a to 8-o inclusive, and ask you if you can identify those? Can you identify those? A. I'll take a look at them. Yes.

Q. And what are they, please?

A. These are the checks and the bank statements of the Montana Leasing Company and the Lexington Silver Lead Mines.

The Court: Checks and bank statements of the Montana Leasing Company?

A. And Lexington Silver Lead Mines.

Q. And what was Lexington Silver Lead Mines with relation to the Montana Leasing Company?

A. It was the same place; they had just changed the name and re-incorporated it.

Q. Was this carried in the same bank account?

A. Yes. [120]

Q. And where have those exhibits been; in whose custody have those exhibits been?

A. When do you mean?

Q. Since they—or did they come into your custody in your employment? A. Yes.

(Testimony of Irene Vermillion.)

Q. And did you retain them in your custody?

A. Yes.

Q. And you obtained the bank statements every month?

A. Yes.

Q. And under whose direction were you acting in maintaining these records of the Montana Leasing Company and Lexington Silver Lead Mines?

A. Mr. Keane and Mr. Allen.

Mr. Stocking: I'll offer exhibits 8-a to 8-o in evidence.

Mr. Emigh: To which the defendant objects as being incompetent, irrelevant and immaterial, the proper foundation has not been laid, as not tending to prove or disprove any issue in this case, as not being established as constituting any part of any alleged conspiracy, as to being an intermingling of a great many exhibits which do not pertain to the question here.

The Court: Ruling reserved.

Mr. Emigh: Exception. [121]

Q. (By Mr. Stocking): I now hand you Plaintiff's exhibit 9 for identification, and ask you if you can identify that exhibit?

A. These are the duplicate deposit slips made to the Montana Leasing and Lexington Silver Mines.

Q. And who made these, who prepared these slips?

A. I prepared most of them.

Q. Were these part of the records that were in your custody, of the Montana Leasing Company?

A. Yes.

(Testimony of Irene Vermillion.)

Q. Does it appear that you prepared most of these deposit slips from the date June 4, 1945, on? Will you examine those, please, in exhibit 9?

A. Yes.

Q. And at whose direction did you prepare those deposit slips; I'm referring now to the ones from June 4, 1945, on, which appear in Exhibit 9?

A. Mr. Keane and Mr. Allen.

Q. And did you ordinarily make the deposits in the bank for this company? A. Yes.

Mr. Stocking: I'll offer in evidence, if the Court please, Exhibit number 9, that portion of Exhibit number 9 from June 4, 1945, on. The first deposit slip goes back to 1943, and it's not pertinent to our case. [122]

Mr. Emigh: May I take a look at this Exhibit 8?

Mr. Stocking: Those run from June, 1945, on.

Mr. Emigh: To which, may it please the Court, the defendant objects on the grounds that the proper foundation has not been laid, the exhibit is incompetent, irrelevant and immaterial, no evidence sufficient to connect the defendant Allen with the transactions therein contained or to establish that he was bound thereby having been made, that the same is as to Allen hearsay, and only tends in the form it is in to confound and confuse the jury.

The Court: It's about time for the jury's morning recess. The jury may now have a recess which I think will be about ten minutes. The jury may retire.

(Testimony of Irene Vermillion.)

(Whereupon, the following proceedings were had without the presence of the jury and two alternate jurors.)

The Court: The wisdom of the court's having taken under advisement the offer of Exhibit number 9 for identification now appears, because from subsequent examination it seems that the stubs therein from 1943 until June 4, 1945, have no connection with the case. I suspect, without knowing, that probably the same situation is true as to Exhibits 8-a to 8-o inclusive.

Mr. Stocking: No, your Honor, they run from June, [123] 1945, through August, 1946, which was the period under which we allege the money was being diverted from the Extension and Pilot to Montana Leasing.

The Court: Well, I'm not at all convinced that these subsequent checks are material. If the monies belonged to the Extension or the Pilot companies, and if this witness at the direction of Mr. Allen made checks to the Leasing Company or to its successor, the Lexington Company, or if this witness at Mr. Allen's request gave him blank checks, it seems to me that probably that's all the government has to show. It becomes then the burden of someone else to justify those checks. Under the opening statement the Leasing Company and its successor, the Lexington Company, were not companies of the stockholders of the Extension or of the Pilot.

(Testimony of Irene Vermillion.)

Mr. Stocking: Our position is this, if your Honor please; that is probably true, but none of the checks from the Pilot or Extension bear Allen's signature. His name appears no-place on those checks. Our only evidence is to show that he caused the diversion of this money. Now, we believe this, that if we can show through these checks that the money in the Montana Leasing Company was being spent by Keane and Allen, substantial quantities of money, that these checks were diverted from Pilot and Extension at a time to meet debit overdrafts in Montana Leasing [124] Company, that there's a direct relationship to show that Allen knew or should have known where all of this hundred thousands of dollars were coming from, going into his company, and in which he was participating in the spending.

The Court: Well, this witness has now testified that she gave two blank checks to Mr. Allen——

Mr. Stocking: Which testimony of course will be denied.

The Court: ——she gave it to him, and those checks under the testimony at least ultimately showed up filled in to the Leasing Company.

Mr. Stocking: One to the Delaware and one to the Leasing Company.

The Court: One to the Delaware and one to the Leasing Company. Now, at the present time, if undenied, that evidence constitutes at least a strong suggestion of wrongful action. If anybody takes

(Testimony of Irene Vermillion.)

the stand and denies it, maybe these other checks then become extremely proper on cross-examination.

Mr. Stocking: Well, it won't be so much denying that the money went to Montana Leasing, because the defendant Allen will recognize that there are checks in there which were made payable to Montana Leasing, but he can take a position that he didn't know where that money was coming from. Our position is this, that we can show [125] that they were spending such large amounts of money in the Montana Leasing, and he was participating in the writing of checks in the Montana Leasing, numerous times the checks came over from Pilot or Extension to meet overdrafts in the Montana Leasing, which would indicate that that was the source of their funds; it was known to both Keane and Allen, and I think it's a circumstance which would add to the government's case.

The Court: Counsel, it is always desirable that a jury not be submerged by a mass of exhibits. At this stage of the proceedings I am very doubtful of the wisdom of admitting the exhibits offered. I do not know whether Mr. Keane is going to be a witness. If he is, after he is, it may become clearer that I should admit them, or it may become less clear that I should admit them, but I'm very doubtful of the wisdom of admitting a great mass of exhibits. Ordinarily I like to know what the exhibits are that I admit, and certainly you gentlemen are going to agree that it would take me quite

(Testimony of Irene Vermillion.)

a while to understand all the exhibits that I have introduced if I would admit 8-a to 8-o inclusive, and 9 following June 4, 1945.

Mr. Stocking: It is our position that the schedules which will be prepared by Mr. Denney, the accountant, would interpret the exhibits.

The Court: Well, maybe after they're in I may be [126] willing to admit them. I may be willing to admit them before. I'm going to reserve ruling now. The ruling being reserved means that each side is put on notice, the government is put on notice that it may have some difficulty getting the exhibits in, the defendant is put on notice that he shouldn't be too complacent about the exhibits being ultimately rejected. Ruling reserved. We will be at recess for ten minutes.

(Short recess.)

(Whereupon, the following proceedings were had within the presence of the jury and two alternate jurors.)

Direct Examination

(Continued)

By Mr. Stocking:

Q. Mrs. Vermillion, are you familiar with the Pilot Silver Lead Mines, Inc., that company?

A. Yes.

Q. Were you one of the officers of that company?

A. Yes.

Q. Of what office?

A. Vice president.

(Testimony of Irene Vermillion.)

Q. And were you one of the incorporators also?

A. Yes.

Q. What month was that company formed, what month of the year, do you recall?

A. I think May, 1946. [127]

Q. You're not sure of that date? It may have been formed several months prior to that?

A. Yes, that's right.

Q. But it was organized by May, 1946, you're sure of that? A. Yes.

Mr. Emigh: We'll object as leading and suggestive.

The Court: Yes, I'll sustain the objection.

Q. Who were the organizers of that company, Mrs. Vermillion?

A. You mean organizers, or incorporators?

Q. The organizers.

Mr. Emigh: It will be objected to as calling for a conclusion of the witness. The incorporators are the legal organizers of the company, and further statement as to organization calls for a conclusion of the witness, invades the province of the jury and the court. If they have evidence as to organization which involves some person not an incorporator, there's a proper method of showing it, otherwise the incorporators are the organizers.

Mr. Stocking: I'll reframe that; I'll withdraw the question.

The Court: All right.

(Testimony of Irene Vermillion.)

Q. Were you present when the Articles of Incorporation were prepared for this company?

A. Yes.

Q. Where were they prepared? [128]

A. In Mr. Keane's office.

Q. And who prepared them?

A. I typed them; is that what you mean?

Q. Yes; and at whose direction did you do the typing? A. Mr. Keane and Mr. Allen.

Q. Was Mr. Allen present at any time when you heard discussions of this organization being created?

A. I don't recall any specific time.

Q. Do you recall whether he was there at the time the Articles of Incorporation were prepared?

A. I really—I don't recall that he was there at that time, that they were prepared.

Q. Did you submit the Articles of Incorporation to him? A. I sent him copies, yes.

Q. Now, what were your duties in connection with this Pilot Silver Lead Mines, Inc., as an officer?

A. Just to prepare the—take care of the original stock issue and the stock transfers, deposit the checks, and pick up the bank statements.

Q. And when you're speaking of the stock transfers, just what does that include?

A. Well, after the stock has been sold, then it's bought and sold, and the making up the new certificates and cancelling the old certificates.

Q. What did your duties include in connection with the [129] original issuance of the stock?

(Testimony of Irene Vermillion.)

A. Receiving the checks from the brokers, and issuing the stock to the names which were on their letters, their order letters, and mailing them back to the brokers, or delivering them.

Q. And in connection with the mailing of the certificates back to the brokers, were letters of transmittal prepared? A. Yes.

Q. And who prepared those letters?

A. Mrs. French and myself.

Q. And Mrs. French is the Mrs. Beatrice French referred to previously, in Mr. Callahan's office?

A. Yes.

Q. Was there any arrangement made with you for any additional compensation for this work for Pilot? A. Yes.

Q. And who made that arrangement?

A. Mr. Keane and Mr. Allen.

Q. And what were those arrangements?

A. Mr. Keane and Mr. Allen—I don't recall which one said it——

Q. Was it said in the presence of—were both of them present?

A. Both of them were present, and we were in Mr. Keane's private office, and they said that the secretary's salary of \$150.00 would be divided between Mrs. French and myself. [130]

Q. Who was the secretary of the company?

A. I think Mr. Evans was, but he was ill and couldn't act.

Q. Is that the reason that arrangement was

(Testimony of Irene Vermillion.)

made for you to do the issuing of the certificates?

A. Yes.

(Whereupon, Pennaluna checks to Pilot were marked Plaintiff's Exhibit No. 10 for identification.)

(Whereupon Redfield checks to Pilot were marked Plaintiff's Exhibit No. 11 for identification.)

(Whereupon, LaVigne checks to Pilot were marked Plaintiff's Exhibit No. 12 for identification.)

Q. Handing you Plaintiff's exhibits for identification 10, 11 and 12, I'll ask you to examine those and state whether or not you can identify them?

A. Yes.

Q. Whose endorsement appears on those exhibits?

A. Mine, or F. C. Keane's signature written by me.

The Court: Your endorsement or whose?

A. F. C. Keane.

Q. You say written by you? A. Yes.

Q. What is Exhibit 10?

A. These are checks from Pennaluna and Company to cover original issue stock in Pilot Silver.

Q. And what is Exhibit 11? [131]

A. Exhibit 11 are checks from Ben Redfield and Company covering original issue of Pilot Silver Lead stock.

(Testimony of Irene Vermillion.)

Q. And what is the exhibit marked for identification number 12?

A. These are checks from Edwin LaVigne and Company covering original issue of Pilot Silver Lead stock.

Q. And what was done by you with those checks after you endorsed them?

A. They were deposited in the Idaho First National Bank to the credit of Pilot Silver.

Q. To the Pilot Company? A. Yes.

(Whereupon, check from Gibson to Pilot, 5/20/46, was marked Plaintiff's Exhibit No. 13 for identification.)

Q. I'll hand you Plaintiff's exhibit number 13, and ask you if you ever received that exhibit in the course of your employ as an employee of the Pilot Company? A. No.

Q. When did you first see this Exhibit 13?

Mr. Emigh: Objected to as immaterial, if she didn't receive it.

The Court: Overruled; you may answer.

Mr. Emigh: Exception.

A. Last May, in Mr. Erickson's office. [132]

The Court: Where?

A. Mr. Erickson's office.

(Whereupon, bank deposit slips, Pilot, were marked Plaintiff's Exhibit No. 14 for identification.)

Q. I hand you plaintiff's 14 for identification, and ask you if you can identify that exhibit?

(Testimony of Irene Vermillion.)

A. These are duplicate deposit slips of the Pilot Silver which were deposited in the Idaho First National Bank at Wallace.

Q. And who prepared these deposit slips?

A. I prepared most of them.

Q. With reference to the deposit slip on the top of the exhibit, had you prepared that deposit slip?

A. No.

Q. When did that deposit slip first come to your attention?

A. Oh, I really don't know; I think Mr. Keane just brought it in and gave it to me.

Q. That was at the time that you were setting up these records of the company? A. Yes.

(Whereupon, checks of Pilot Co. were marked Plaintiff's Exhibit No. 15 for identification.)

Q. I'll hand you Exhibit 15 for identification, and ask you if you can identify that exhibit?

A. These are checks drawn on Pilot Silver Lead Mines Company. [133]

Q. And who drew those checks?

A. Mostly by myself.

Q. And whose signature did you place on the checks?

A. They're endorsed by Mr. Keane or by Mr. Keane's name written by me.

Q. That is, not endorsed, but signed?

A. I mean signed, yes, excuse me.

(Testimony of Irene Vermillion.)

(Whereupon, checks stubs, Pilot Co., were marked Plaintiff's Exhibit No. 16 for identification.)

Q. Plaintiff's exhibit 16 for identification, can you identify that, please? A. Yes.

Q. What is that exhibit?

A. These are the stubs of Pilot Silver Lead Mines.

Q. And who prepared that exhibit?

A. I did.

Mr. Stocking: I'll offer in evidence Plaintiff's Exhibits 10, 11, 12, 14, 15 and 16.

The Court: You're not offering 13 at this time?

Mr. Stocking: No; that was the one she didn't—

Mr. Emigh: As to Plaintiff's exhibit number 10 for identification, the defendant objects on the grounds and for the reason that the same is incompetent, irrelevant and immaterial to the issues in this case; a proper foundation has not been laid; no evidence tends to establish the [134] connection of the defendant with the matters to which the exhibit relates; that there is no evidence that the defendant was privy to any of the transactions to which the exhibit relates, and the exhibits affirmatively show on their face that he did not participate in the receipt or deposit of the same.

Mr. Stocking: May I have permission to ask one more question with respect to these exhibits?

The Court: You may.

(Testimony of Irene Vermillion.)

Q. With respect to Exhibit 15, which you have identified as the Pilot checks, at whose direction were those checks drawn by you?

A. Mr. Keane and Mr. Allen.

Mr. Stocking: That's all.

Mr. Emigh: Are you through? The specific objection was made to Exhibit 10, your Honor, to which the other examination did not relate.

The Court: Well, I'm inclined to think that as to Exhibit 15 the ruling should be reserved until there's more evidence, and therefore as to Exhibit 15 for identification the ruling is reserved. As to the other exhibits, 10, 11 and 12, 14 and 16, I don't recollect any mention of Mr. Allen's name as to any of them. It would seem to me that upon the present state of the record that I should sustain the objection, without any prejudice to plaintiff's later attempting to have them admitted.

Mr. Stocking: I was going to call the Court's attention to the witness's testimony that she acted under his direction as well as Keane's direction in connection with the organization of this company and in connection with the writing of the checks by which the money was disbursed.

The Court: I have not before me the question of whether the Articles of Incorporation should or should not be admitted. She did testify as to Mr. Allen to some extent in connection with the Articles, or the preparation. I recollect no testimony by her as to Mr. Allen——

(Testimony of Irene Vermillion.)

Mr. Stocking: She was hired by Mr. Allen.

The Court: —as to any of these other exhibits except exhibit 15 she said was drawn at the direction of Mr. Keane and Mr. Allen, and I'm reserving ruling as to that.

Mr. Stocking: I call the Court's attention to the fact she was hired by Mr. Allen, her salary was fixed by Mr. Allen and Mr. Keane jointly.

The Court: I recognize all that. The Court's ruling is that as to Exhibits 10, 11, 12, 14 and 16, that the defendant's objection is sustained on the present state of the record.

(Whereupon, Pilot bank statements were marked Plaintiff's Exhibit No. 17 for identification.) [136]

Q. I hand you Plaintiff's exhibit 17 for identification, and ask you if you can identify that, please? A. Yes.

Q. What is it?

A. It is the bank statement of the Pilot Silver Lead.

Q. And this came to you in the regular course of business of that company? A. Yes.

Q. And these bank statements were checked by you with the company's checks contained in Exhibit 15 for identification? A. Yes.

Mr. Stocking: I'll offer that under the same situation, if the Court please.

Mr. Emigh: To which the objection is made it's

(Testimony of Irene Vermillion.)

incompetent, irrelevant and immaterial at this point in the case, the proper foundation has not been laid, there is no testimony connecting Mr. Allen with those accounts, that those accounts or the bank statement relates to a great amount of matter not material to the case, that as to a conspiracy under which those would be admissible, no facts have yet been established which would prove such a conspiracy, and that they are in the nature of hearsay as to the defendant Allen.

The Court: As to Exhibit 17, there is some relationship testified by the witness between that exhibit [137] and Exhibit 15, concerning which I have reserved ruling, and ruling will be reserved as to Exhibit 17 for identification. You may proceed.

(Whereupon, check Allen to Pilot was marked Plaintiff's Exhibit No. 18 for identification.)

(Whereupon, letters to Gibson were marked Plaintiff's Exhibit No. 19 for identification.)

(Whereupon, letter to Redfield was marked Plaintiff's Exhibit No. 20 for identification.)

(Whereupon, letters to LaVigne were marked Plaintiff's Exhibit No. 21 for identification.)

Q. (By Mr. Stocking): Mrs. Vermillion, I'll hand you what has been marked for identification Plaintiff's exhibit 19, and ask you if you can identify that exhibit? A. Yes.

(Testimony of Irene Vermillion.)

Q. What is it?

Mr. Emigh: Just a minute. I think the defendant will object to that question, as the improper way to identify the exhibit. The statement by the witness of the exhibit is secondary evidence as to what the exhibit is, and we submit the proper way to identify it is to limit that examination as to where and when it was prepared and what it purports to show.

The Court: Well, I think there's nothing mistaken as to the question. I have to know what it is, to a degree, [138] before I know whether I can admit it or not. Objection overruled.

Mr. Emigh: Exception.

A. These are the original letters transmitting the original issue of Pilot Silver stock to the various brokers. This one happens to be all to E. J. Gibson Company.

Q. And where is the E. J. Gibson Company firm located?

A. Spokane.

Q. And who prepared these letters?

A. Mrs. French and myself.

Q. And whose signature appears on these letters?

A. Mine.

Q. Under whose direction did you prepare these letters?

A. Mr. Keane and Mr. Allen.

Q. And after these letters were prepared transmitting the certificates, who prepared the stock certificates that accompanied these letters?

A. Mrs. French and myself.

Q. At whose direction were they prepared?

(Testimony of Irene Vermillion.)

A. Mr. Keane and Mr. Allen.

Q. After the letters were prepared and the stock certificates prepared, what was then done with these letters?

A. They were attached to the certificates and mailed out to the brokers.

Q. And who mailed those letters? [139]

Mr. Emigh: Just a minute. We object. There is no evidence the letters were mailed, and presupposes a fact that does not exist.

Mr. Stocking: She said they were mailed.

The Court: Overruled.

Mr. Emigh: Exception.

Q. Who mailed the letters?

A. I believe I mailed most of them.

Q. And Mrs. French was assisting, was she not?

Mr. Emigh: May I interpose a motion to strike, her evidence not being direct evidence of a statement of fact, but of a belief.

The Court: Overruled.

Q. Mrs. French was assisting you in this work?

A. We worked together.

Q. Was she acting under your direction in the preparation of these certificates and letters?

A. That's a hard question to answer.

Q. Was she an officer of the company?

A. I think she was assistant secretary. She signed stock certificates, I know, for a while.

Q. As assistant secretary?

A. As assistant secretary.

(Testimony of Irene Vermillion.)

Q. And where were these letters mailed?

A. At Wallace, or from Wallace. [140]

Q. From Wallace, Idaho? A. Yes.

Q. I hand you what has been marked for identification Plaintiff's Exhibit number 20, and ask if you can identify that? A. Yes.

Q. What is that?

A. It's a letter of transmittal to Ben Redfield Company of Spokane of stock the original issue of Pilot Silver.

Q. And who prepared that letter?

A. I did.

Q. And whose signature appears thereon?

A. Mine.

Q. What was done with that letter after it was prepared?

A. It, together with the certificates, were mailed to Mr. Redfield at Spokane.

Q. And were they mailed in an envelope addressed with the same address as the letter?

A. Yes.

Q. Does that apply also to the letters which are a part of Plaintiff's proposed exhibit 19?

A. Yes.

Q. At whose direction was that letter prepared and mailed?

A. Mr. Keane and Mr. Allen.

Q. I'll show you what has been marked for identification as [141] Plaintiff's exhibit number 21, and ask if you can identify that exhibit? A. Yes.

(Testimony of Irene Vermillion.)

Q. And what is it?

A. These are original letters of transmittal covering original issue certificates of the Pilot which were mailed to Edwin LaVigne and Company in Spokane.

Q. And who prepared those letters?

A. Mrs. French and myself.

Q. Who signed the letters? A. I did.

Q. And what was done with those letters after they were prepared and signed?

A. They were mailed to Spokane to Edwin LaVigne and Company.

Q. With the stock certificates? A. Yes.

Q. And were they mailed in an envelope addressed the same as it appears on the letters?

A. Yes.

Q. These exhibits will be further identified later. I hand you what has been marked for identification Plaintiff's exhibit 18, and ask if you can identify that exhibit? A. Yes.

Q. Referring to Plaintiff's proposed exhibit 14, can you state whether or not that exhibit 18 was deposited in the Pilot [142] account?

A. Yes.

Q. And who made that deposit?

A. I did.

Q. What was the date that that exhibit was deposited? A. November 20, 1946.

Q. And can you identify the signature on exhibit 18? A. Yes.

(Testimony of Irene Vermillion.)

Q. Whose signature is it? Mr. Allen's.

Mr. Stocking: I'll offer in evidence Plaintiff's exhibit 18.

Mr. Emigh: May I have a moment?

The Court: Surely.

Mr. Emigh: This is rather confusing as to some matters in this case, and I'd like to consult with my client a moment.

Voir Dire Examination

By Mr. Emigh:

Q. Have you any knowledge of what that check was paid for? A. No.

Q. None at all? A. No recollection.

Q. Huh? A. No recollection.

Q. No recollection; did you have knowledge at the time? [143]

A. I don't remember particularly about that check.

Q. You don't remember. You were an officer of the corporation? A. Yes.

Q. At that time? A. Yes.

Q. Isn't it a fact that that check was paid for machinery purchased by the Pilot, not paid for, for which Mr. Allen advanced the money, machinery which Mr. Sekulic was to receive the money for?

A. I don't recall specifically about that.

Q. You do not? A. No.

Mr. Emigh: At this time, may it please the Court, we'll object that there's no competency or relevancy shown as to this exhibit, it's incompetent.

(Testimony of Irene Vermillion.)

irrelevant and immaterial, does not prove or tend to prove any of the issues of this case.

The Court: It's not been offered yet, has it?

Mr. Stocking: I thought I offered it.

The Court: Was it offered in evidence, Mr. Taylor?

The Reporter: Yes, your Honor.

The Court: Well, let me see it.

Mr. Emigh: It doesn't show any proof in connection with the defendant in this case. [144]

The Court: I'd like to see it.

Mr. Emigh: The exhibit, the record may add, is as consistent with a legitimate transaction as any other.

The Court: Well, of course, after all the evidence is in the jury may be convinced that every action of Mr. Allen was consistent with propriety, in which event they should acquit him. This exhibit is one evidence that there was some connection between Mr. Allen and the Pilot Company. The objection is overruled.

Mr. Emigh: Exception.

The Court: It will be admitted for what, if any, help the jury thinks it is in arriving at the truth after it has all the evidence. Exhibit 18 admitted; objection overruled.

(Whereupon, Plaintiff's Exhibit No. 18 for identification was admitted in evidence.)

(Whereupon, check #17 of Pilot was marked Plaintiff's Exhibit No. 15-a for identification.)

(Testimony of Irene Vermillion.)

(Whereupon, check #31 of Pilot was marked Plaintiff's Exhibit No. 15-b for identification.)

Mr. Stocking: I've taken from plaintiff's exhibit 15 the Pilot check number 17, which is——

The Court: These are from exhibit 15?

Mr. Stocking: Yes. Check number 17, which has been marked for identification 15-a, and check number 31, [145] which has been marked for identification 15-b.

Q. I'll show you these checks, Mrs. Vermillion, and ask if you can identify those two checks?

A. Yes.

Q. Who prepared those?

A. I typed them.

Q. And whose signature appears on those two checks? A. F. C. Keane.

Q. Is that his signature, or a signature by you?

A. That's his signature.

Q. That's his signature? A. Yes.

Q. And are you familiar with the name of the payee of those two checks? A. Yes.

Q. Where did you get your information concerning the payee of those two checks?

A. That company is one which was incorporated in the office.

Q. And did you have any conversations with the defendant Allen with regard to that company?

A. Yes.

Q. About when did those conversations or that conversation take place, approximately?

(Testimony of Irene Vermillion.)

A. I believe in—let's see—it was in June and July.

Q. Of what year? [148] A. Of 1946.

Q. And what was the name of this company that you had this conversation with Mr. Allen about?

A. War Eagle Silver Lead Mines, Inc.

The Court: What was the name of it?

A. War Eagle Silver Lead Mines, Inc.

Q. And what was this conversation, the substance of this conversation with Mr. Allen?

* * *

(Noon recess.)

June 7, 1949, 1:30 o'Clock P.M.

(All parties present as before, and the trial was resumed.) [147]

Mr. Stocking: I believe I had asked the question, and Mr. Emigh was just objecting to my question, and that was in relation to Plaintiff's Exhibits 15-a and 15-b, and I had asked you, Mrs. Vermillion, what was the substance of your conversation with Mr. Allen regarding War Eagle Silver Lead Mines, Inc., during the period which you've indicated.

Mr. Emigh: To which we object on the grounds and for the reason that the time, place and circumstances have not been so fixed to afford opportunity for impeachment.

The Court: You may specify as nearly as you can.

(Testimony of Irene Vermillion.)

Q. (By Mr. Stocking): When do you fix that, as nearly as you can, Mrs. Vermillion?

A. In regard to the first check, would you say?

Q. Yes, take the first check; that would be check number 17, Exhibit number 15-a.

A. June 28, 1946.

Q. It was on or about that date? A. Yes.

Q. And what was the substance of that conversation with Mr. Allen?

The Court: June, what date?

A. 28th, 1946.

The Court: All right.

A. The Idaho First National Bank called that there was an [148] overdraft on the War Eagle, and we called——

Mr. Emigh: Just a second; that's objected to as detailing hearsay.

The Court: Yes. She may say what the conversation between her and Mr. Allen was, not what otherwise may have happened, except as the conversation itself stated it, and the witness's answer is stricken as not responsive.

A. I talked to Mr. Allen on the phone regarding an overdraft that happened——

Mr. Emigh: Just a minute; we ask that it be confined to conversation.

Mr. Stocking: Well, she is talking about the conversation.

A. On the phone.

The Court: Just say what, as near as you can, in

(Testimony of Irene Vermillion.)

substance, you can't remember the exact words——

Q. Did you put in a call to Mr. Allen?

A. Yes.

Q. All right, go ahead.

A. I don't know how to state it any other way. You'll have to ask me some questions.

Q. Go ahead the way you were stating it.

A. I told him that we had had a call from the Idaho First National Bank about an overdraft on the War Eagle, and he said to cover it, that he had made arrangements with Mr. [149] Porter, who would cover all drafts on the War Eagle up to \$5,000.00.

Q. And as a result of that conversation was this exhibit 15-a written up by you? A. Yes.

Q. And was that exhibit 15-a then deposited to the War Eagle account? A. Yes.

Q. By you? A. Yes.

Q. Now, with respect to the second check, 15-b, what conversation—did you have any additional conversation with Mr. Allen with regard to that check?

A. I'd have to see the bank statement to see if this was past the \$5,000.00.

Q. Which bank statement?

A. Do you have a War Eagle bank statement?

Q. No. Those are the only two checks we have.

A. I believe Mr. Porter must have that. I don't think I can specify to that.

Mr. Emigh: Just a minute; I think that ques-

(Testimony of Irene Vermillion.)

tion calls for a yes or no answer, and we would ask before further conversation, time, place and circumstances be fixed.

The Court: Well, let's hear the question. [150]

Mr. Stocking: I believe I asked if she had any further recollection of any further conversation with Mr. Allen regarding the second check.

The Court: Well, she may say whether she had or not.

A. I can't be certain on that.

Q. But this second check, 15-b, was drawn up by you, and also was that deposited by you in the War Eagle account? A. Yes.

Q. And this action was taken as the result of Mr. Allen's directions to you for both checks?

A. Yes.

Mr. Stocking: We'll now offer 15-a and 15-b in evidence.

Mr. Emigh: May I see the exhibits? Objected to as incompetent, irrelevant and immaterial, that proper foundation has not been laid for the introduction of said exhibits at this time, that the same do not tend to prove or disprove any issue under the indictment in this case; that's all.

The Court: All right, let me see the two proffered exhibits. Objection is overruled, Exhibits 15-a and 15-b admitted.

Mr. Emigh: May we ask an exception.

(Whereupon, Plaintiff's Exhibits No. 15-a and 15-b for identification [151] were admitted in evidence.

(Testimony of Irene Vermillion.)

Q. (By Mr. Stocking): Referring back to exhibits 6-a and 6-b, which were the checks you stated you signed in blank and gave to Mr. Allen on August 7, 1945, have you refreshed your recollection as to whether or not Mr. Keane was in Wallace, in the office in Wallace, on that date?

A. He was out of town.

Q. Did you refresh your recollection on that point? A. Yes.

Q. And what did you refer to to refresh your recollection?

A. From my memo pad for that year; I keep them from year to year.

Q. And where did you determine that he was on that date?

Mr. Emigh: Just a moment; to which we object on the ground and for the reason that the witness has not fixed a definite date in her testimony, and we ask that the witness be confined to a definite date.

Mr. Stocking: This question is confined to a definite date, August 7, 1945.

Mr. Emigh: Now, to which we object as contrary to the testimony of this witness as to the dates of those checks. She would not fix a definite date, except the 7th or 8th, my recollection of the testimony is.

The Court: Let me see the checks. Well, one is August 28, and the other is August 7. Your question—[152]

(Testimony of Irene Vermillion.)

Mr. Stocking: Is as to August 7, yes.

The Court: All right, you may re-specify.

Mr. Stocking: Yes. Her testimony was that she gave those checks together at the same time, the same date, in blank, signed in blank.

The Court: Well, she stated that Mr. Keane was out of town that date——

Mr. Stocking: That's right.

The Court: —according to her memo pad.

Mr. Emigh: The point I was making, if my memory doesn't fail me, she says the 7th or 8th, the date these checks were given, before.

The Court: All right, you may ask her what date these checks in blank were given.

Q. (By Mr. Stocking): What is your recollection as to the date that these checks were delivered to Mr. Allen? A. August 7, 1945.

Q. And now I'll ask you, did you determine or did you refresh your recollection as to where Mr. Keane was on that date?

A. He was in Avery, Idaho, or outside of Avery, Idaho, up in the hills on a fishing trip.

Q. And was he also there on August 8?

A. August 7, 8, I think he came back on the 9th or 10th; the 9th or 10th he returned.

Q. Now, referring to one more question with regard to plaintiff's [153] proposed exhibits 19, 20 and 21, which were the Pilot letters transmitting certificates to the brokers, were those letters placed in the mail on or about the dates indicated on each letter?

(Testimony of Irene Vermillion.)

Mr. Emigh: Objected to as repetition.

The Court: Overruled.

Mr. Emigh: Exception.

A. On or about, yes.

Q. Yes; I didn't think I'd covered that. Mrs. Vermillion, do you have in mind approximately how much salary you realized from your work in connection with these two companies? What was your compensation, entire compensation, aside from your regular salary, approximately?

A. I can't multiply in my head; seven months at \$75.00 a month; is that good enough?

Q. Yes; and then did you receive any bonus, either in stock or cash?

A. I received a five thousand dollar—excuse me, five thousand shares of stock in the Extension, and five thousand shares of stock in the Pilot.

Q. Did you dispose of that stock?

A. Yes.

Q. At approximately what price, do you recall?

A. Three cents a share.

Q. So that that amounted to how much?

A. It was approximately \$315.00.

Q. And there was no other compensation paid to you in the form of stock or cash? A. No.

(Whereupon, stock certificate stubs No. 1 to 250 of Pilot were marked Plaintiff's Exhibit No. 22 for identification.)

(Whereupon, stock certificate stubs No. 251 to 500 of Pilot were marked Plaintiff's Exhibit No. 23 for identification.)

(Testimony of Irene Vermillion.)

(Whereupon, stock certificate stubs No. 501 to 750 of Pilot were marked Plaintiff's Exhibit No. 24 for identification.)

(Whereupon, stock certificate stubs No. 751 to 1000 of Pilot were marked Plaintiff's Exhibit No. 25 for identification.)

(Whereupon, stock certificate stubs No. 1001 to 1250 of Pilot were marked Plaintiff's Exhibit No. 26 for identification.)

(Whereupon, stock certificate stubs 1251 to 1500 of Pilot were marked Plaintiff's Exhibit No. 27 for identification.)

(Whereupon, stock certificate stubs No. 1501 to 1750 of Pilot were marked Plaintiff's Exhibit No. 28 for identification.)

(Whereupon, stock certificates of Pilot Company were marked Plaintiff's Exhibit No. 29 for identification.)

Q. Mrs. Vermillion, will you please examine what has been [155] marked Plaintiff's exhibits for identification number 22 to 28 inclusive, and state whether or not you can identify those?

A. I can identify part of them.

Q. And which exhibits can you identify?

A. 23, 24, 22, 26, 25, and the first part of exhibit 27.

Q. And what are they?

(Testimony of Irene Vermillion.)

A. These are the stubs of the stock certificates that were issued in Pilot Silver Lead Mines, Inc.

Q. Who prepared those exhibits which you have identified?

A. Some were prepared by myself, and some by Mrs. French.

Q. And that was at the time that these books and records were in your custody in Mr. Keane's office?

A. Yes.

Q. And when were these books and records taken out of your custody, that is, the exhibit 27, part of which only you [156] can identify, approximately?

A. Approximately the 3rd or 4th day of March, 1947.

Q. Now, these are the regular books and records of the corporation, and were kept, were they, in the usual course of business at the time you were employed by the company?

A. Yes.

Mr. Stocking: We'll offer in evidence exhibits 22 to 27 up to—was this date the date?

A. Yes, this is the last entry.

Mr. Stocking: Up to the certificate number 1376, which is dated March 5, 1947.

Mr. Emigh: To which the defendant Allen objects on the ground and for the reason that these exhibits all are and each thereof is incompetent, irrelevant and immaterial to prove any issue in this case; further, that as to the defendant Allen the same are hearsay, there being no evidence that the

(Testimony of Irene Vermillion.)

same were kept under his direction or under his control or that he had any control or connection therewith; that there is no sufficient establishment that these relate to any agreement or scheme by which it is alleged in the indictment a fraud was committed by Allen.

The Court: Ruling reserved.

Q. (By Mr. Stocking): I'll hand you a bundle which has been marked for identification as Plaintiff's Exhibit number 29, [157] and ask if you can identify that exhibit or any part thereof?

A. Could you give me that number? I mean I don't want to make a mistake.

Q. Certificate 1376.

A. I can identify this much of them, down to a certificate marked 1379.

Q. Well, I see that there are some certificates out of numerical order, in the 1400s, which are above that certificate. Did you mean that you could identify certificates up to that number?

A. Yes.

Mr. Emigh: May I have that number, then?

A. 1379—1376 is the number; 1379.

Q. 1379 was the certificate you referred to in here? A. Yes.

Q. Now, does your signature appear on some of the certificates in this Exhibit number 29?

A. Yes.

Q. And at whose request were you acting when you signed these certificates, placed your signature on them?

(Testimony of Irene Vermillion.)

A. Mr. Keane and Mr. Mc—Mr. Allen.

Q. And where the signature “F. C. Keane” appears on these certificates, was that signature ever signed by you? A. No. [158]

Q. Mr. Keane always signed these stock certificates his own signature, is that correct?

A. Yes, that’s correct.

Q. Mrs. Vermillion, in connection with the Extension and Pilot Companies, did you ever have any conversations with the defendant Allen with regard to the transferring of stock certificates?

A. Yes.

Q. And how many such conversations?

A. Oh, I couldn’t say.

Q. Were they numerous? A. Yes.

Mr. Emigh: Just a minute; objected to as calling for a conclusion of the witness. That’s a matter of comparison.

The Court: Well, I’ll strike the answer, and you may ask how often they were.

Q. How often were these conversations?

A. I couldn’t be definite about that.

Q. What was the substance of the conversations with regard to the——

Mr. Emigh: Just a minute; to which the defendant objects on the ground and for the reason that proper foundation is not laid.

The Court: Overruled. [159]

Mr. Emigh: Exception.

The Court: You may answer.

A. Would you read that?

(Testimony of Irene Vermillion.)

(Whereupon, the reporter read the last previous question.)

A. To issue certain shares of stock and transmit them to him or to where he directed me to send them.

The Court: Would you just read that answer, please?

(Whereupon, the reporter read the last previous answer.)

Q. And do you recall from what certificates these shares were to be taken from or issued from?

A. What company are we speaking of now?

Q. Well, we'll take the Extension Company.

A. There were some from Mr. Keane's certificate, and a great share from Mr. Grismer's certificate.

Q. Was there a large amount of stock outstanding in Mr. Grismer's certificate?

A. Yes. I can't be specific about the amount; I'd have to check the record.

Q. And what about the Pilot certificates?

A. The same thing applies to the Pilot, with the exception that Mr. Grismer didn't have as large a certificate in Pilot as he did in the Extension, and I'd have to look at the stock book to be more definite. [160]

Q. But did Mr. Allen give you some directions as to issuing stock out of Mr. Grismer's certificate?

A. Yes, he would often call and have me issue certificates either in my name or Mrs. French's

(Testimony of Irene Vermillion.)

name, it was McLean at that time, and would direct that I get her to verify my signature, and I verify hers, and we would mail them to him.

The Court: What was her name then?

A. McLean.

Q. Beatrice McLean French is her full name, is it not? A. Yes.

Q. At that time would he give you any directions as to consulting Mr. Grismer about these transactions? A. No.

Mr. Stocking: You may cross-examine.

Mr. Emigh: Do you propose to offer those exhibits? You've had her to testify to them.

Mr. Stocking: Which exhibits?

Mr. Emigh: I don't think those certificates were offered.

Mr. Stocking: These certificates I haven't offered, no.

Cross-Examination

By Mr. Emigh:

Q. The certificates you were just testifying to are the certificates in the exhibit which is on the clerk's desk, [161] is that correct?

A. I don't know just exactly what ones are in there.

Q. What certificates were you talking about?

A. That I sent to Mr. Allen?

Q. When you talked about these conversations.

A. I can't specify them by number or amount, unless I would see the book; I'm sorry.

(Testimony of Irene Vermillion.)

Q. When did these conversations occur?

A. From July, the end of July, 1945, until, oh, I think September or October in 1946.

Q. Now, when you were first on the stand, early on the stand, you testified that Mr. Allen gave you instructions as to issuance of "their stock" using the word "their." To whom did you refer?

A. What do you mean, "their stock?" I mean, I don't understand your question.

Mr. Emigh: Mr. Reporter, will you read the question?

(Whereupon, the reporter read the last previous question.)

A. Mr. Keane and Mr. Allen's stock.

Q. Mr. Keane and Mr. Allen's stock. Now, when were those directions issued to you?

A. From time to time, either in the office or by phone.

Q. Where and when?

A. I would have to check with the stock book to see the dates [162] of the certificate.

Q. What is that answer? I can't get it.

A. I would have to check with the stock book to see the dates of the certificates.

Q. Can't you give an approximate time?

A. Just general. There were a great many certificates issued and mailed to him in Spokane, or delivered to him personally.

Q. And was that during July, 1945?

(Testimony of Irene Vermillion.)

A. That's when the original issue was out. It was probably a little later than that.

Q. Well, we'll say August?

A. I would rather not be definite unless I could see the stock book.

Q. Huh?

A. I'd rather not be definite until I could see the stock book.

Q. And that related to what is known as the original issue, was it, the first issue?

A. No, not the original issue.

Q. When was the first issue made?

A. In the last part of July, 1945.

Q. Yes; and with relation to that time, what time were these instructions given to you that you're speaking of?

A. It would be in August of 1945. [163]

Q. That was in August. Was there a second issue of the Extension stock made?

A. Sometime in January, the first part of January, in 1946.

Q. 1946?

The Court: This is the Extension?

A. Yes.

Q. And these instructions were some time before that?

A. They were just from time to time during that period.

Q. Yes; well, were there any of them before the second issue? A. Yes.

(Testimony of Irene Vermillion.)

Q. There were; how many before the second issue?

A. I couldn't testify unless I saw the stock book.

Q. Now, you say that that was Allen and Keane's stock?

A. The stock, a good part of it, was in Mr. Grismer's name, but that's the only way I can identify it.

Q. By what?

A. It belonged to the three of them, was my understanding.

Q. You say it did. How do you know that? Was it on the books in their name?

A. It was on the books in Mr. Keane's name and Mr. Grismer's name, but my instructions were to give Mr. Allen whatever he wanted, when he called me and gave me instructions to give them to him.

Q. Now, those were Mr. Keane's instructions to you?

A. Mr. Allen was there at the time he made them.

Q. And what date was that that these instructions were given?

A. That was at the time when the stock was originally put on the market, and the original issue, and I believe the first certificates were the last of August or the first part of September, that were given to Mr. Allen.

Q. And where were those instructions given?

A. In Mr. Keane's office.

Q. On approximately what date?

(Testimony of Irene Vermillion.)

A. I'll have to make it general; between the middle of August and the first week in September, 1945.

Q. The stock had all been issued at that time, I mean the—— A. Original issue?

Q. ——Keane's stock?

A. You mean original issue?

Q. Original issue. A. I believe so.

Q. You hadn't ever talked about, or they hadn't talked to you about the issuance of the stock before the original issue was consummated?

A. No.

Q. This was the first time you had any conversation about it?

A. You mean in regard to giving some to——

Q. With Allen or Keane?

A. How do you mean?

Q. In relation to the disposal of the stock? [165]

A. Yes.

Q. And you're quite sure now that Mr. Allen gave you instructions as to the disposition of that stock, that first issue, before the second issue?

A. Yes.

Q. Can you tell us, of the stock of Keane's, to whom you were directed by Allen to issue any certificates?

A. Yes. Miss McLean, at that time, now Mrs. French, and myself.

Q. To McLean and yourself?

A. And we endorsed them and had the signa-

(Testimony of Irene Vermillion.)

tures verified. We called it street stock; that might not be accurate, but that's what we called it. It was negotiable.

Q. "We called it street stock;" who is "we?"

A. Mrs. McLean and myself; we're not technical about it.

Q. You didn't thing your services justified the issuance of that stock, is that what you mean?

A. No; we understood it wasn't ours.

Q. You understood it wasn't?

A. No, it wasn't our stock.

Q. Did you sell it? A. No.

Q. Later?

A. Now, you're referring to this stock that was issued in large amounts, is that what you're referring to? [166]

Q. What's that?

A. You're referring to this stock that was issued in large amounts, is that what you're referring to? I'm not talking about the 3,000 shares given to me personally; that isn't what you're asking about, is it?

Q. Was this other stock issued to you and Mrs. McLean?

A. Yes, there was stock issued to us.

Q. And how much of that was there?

A. I don't know the amount. I'd have to refer to the——

Q. And when was that issued?

A. It was issued between, oh, somewhere in the

(Testimony of Irene Vermillion.)

middle of August, 1945, up through August, September, in 1946.

Q. And that is the stock you call Allen and Keane's stock? A. Yes.

Q. And that was in record in your name and Miss McLean's? A. Yes.

Q. And so issued? A. Yes.

Q. And when was Mr. Allen first, to your knowledge, a stockholder of record in that corporation?

A. I don't remember that I ever saw his name on the books.

Q. Was that Grismer stock free stock?

A. I don't understand what you mean by free.

Q. Or street stock?

A. I guess I'll have to qualify that. It was a very large [167] certificate, and we issued the street stock against it, but it wasn't cancelled out.

Q. Oh, you issued the street stock against it? How many shares of Extension did you and Miss McLean have in your names to start with?

A. How do you mean, to start with?

Q. Well, the first issue? A. None.

Q. Well, then, how much did Mr. Grismer and Mr. Keane have?

A. I wouldn't like to say unless I could see the book. There were too many transactions.

Q. Well, can you tell us approximately?

A. Originally Mr. Grismer had all but 300 shares of the three and a half million issued in his name, I believe, in the Extension.

(Testimony of Irene Vermillion.)

Q. At the time of original issue how much did he have?

A. It was almost two million—no, excuse me—I really can't explain that. It was all in his name, and he donated it back to the treasury.

Q. How much did he actually have before he donated back to the treasury? A. Before?

Q. Yes.

A. Three million four hundred—well, nearly three million five hundred thousand shares, less 300. [168]

Q. What was that issued for originally, if you know? A. How do you mean?

Q. What consideration? A. I don't know

Q. You were an officer of the company?

A. No. You're speaking of Extension?

Q. Were you the secretary or assistant secretary? A. Yes, after the stock had been issued.

Q. Getting back to the question, how much was donated back at that time?

A. I'd have to ask you to let me look at a book or something. I just cannot specify—

Q. Could you give us an approximate amount?

A. Oh, around maybe two million shares; I don't recall exactly.

Q. Maybe how many? A. Two million.

Q. That was part of the organization, wasn't it, that's the way the corporation is formed and the stock set up, is that it?

A. That's the way I understand it.

(Testimony of Irene Vermillion.)

Q. Now, you say that you issued certain of the Grismer stock as directed by Allen? A. Yes.

Q. When was that? [169]

A. From time to time during that period.

Q. Well, when did the first time occur?

A. As I say, I would have to look at the book; I can't tell you.

Q. Would you say it was in June or July?

A. No, the original issue wasn't out at that time.

Q. It wasn't out at that time?

A. You're speaking of 1945?

Q. Did you know the circumstances of that issue of those stocks out of Grismer's stock?

A. What do you mean?

Q. Well, do you know whether or not, of your own knowledge, a consideration passed between Allen and Grismer? A. I don't know.

Q. Do you know the amount of this stock that you issued out of the Grismer stock?

A. Without looking at the book, no.

Q. Huh?

A. Without checking with the books, no.

Q. Isn't it true that the majority of the stock which Allen directed you to issue was Grismer stock?

A. I believe there was—I believe he gave me some instructions regarding Mr. Elmer Johnston's stock.

Q. I'm asking you about the Grismer stock.

(Testimony of Irene Vermillion.)

Isn't it a fact that practically all of the certificates which Allen [170] directed you to issue were issued out of Grismer stock?

A. Mr. Grismer had the largest share, but he directed some out of Mr. Keane's, too.

Q. Well, can you tell us how much you say came out of Mr. Keane's stock?

A. I think Mr. Keane had 500,000 shares; I don't want to be accurate, because I've got to check.

Q. Do you mean Mr. Allen directed you to issue 500,000 shares out of Keane's stock?

A. No, I was going to qualify that.

Q. My question is, how much, in ratio, of that which Mr. Allen directed you to issue came out of Grismer's stock, in proportion?

A. I couldn't testify without looking at the book.

Q. Isn't it true that all of it did?

A. No, part came out of Mr. Keane's, I'm quite sure.

Q. How much?

A. Between 300,000 shares and——

Q. Between what?

A. Between 300,000 and 350,000, approximately.

Q. Well, can you give us anyone to which those were issued?

A. Mrs. French, Miss McLean, and myself.

Q. And is that all?

A. You mean were there any other people, any other names?

(Testimony of Irene Vermillion.)

Q. Yes. [171]

A. Offhand I don't recall.

Q. Now, how much of the attorney's stock was carried in Allen's name?

A. None that I know of.

Q. None that you know of. How much was carried in Keane's name?

A. His own 500,000 shares.

Q. That was the attorney's stock?

A. Well, that was the stock that was issued to him as attorney. Now, what do you mean by attorney? Maybe I misunderstand you; what attorneys do you mean?

Q. The attorney's stock issued to Keane.

A. I believe that was 500,000 shares.

Q. You think that was 500,000 shares. What other stock, if any, did Keane have besides that?

A. You mean in the Extension?

Q. That's right; we're talking about Extension.

A. I don't know that he had any more than that.

Q. Do you know whether he had any other or not? A. No, I don't know.

Q. Your employment was as a secretary, a stenographer for Mr. Keane, wasn't it?

A. That's right.

Q. And your services were acting as secretary for a number of corporations for him, or assistant secretary? [172]

A. No, I was strictly a legal secretary, if I understand your question.

(Testimony of Irene Vermillion.)

Q. What's that?

A. I was just a legal secretary, if I understand your question.

Q. Just a legal secretary? A. Yes.

Q. Well, I think there are a large number of corporations who had their offices there, that Mr. Keane was interested in? A. Yes.

Q. How many were there?

A. At what time? We had as high as seven at one time.

Q. At the time of the occurrence of the Extension.

A. Now, would you want to specify? I don't want to say Montana Leasing, and Independence—is that the way you want it?

Q. Well, Montana Leasing, did you have the books of the Montana Leasing there?

A. We had the records of the Montana Leasing.

Q. All right, what other one?

A. Independence Lead Mines.

Q. Independence? A. Yes.

Q. What's the full name of that corporation?

A. Independence Lead Mines Company.

Q. You had the books of that corporation there?

A. We had the records.

Q. That's the bank books and the others?

A. Yes.

Q. The records. What other corporations?

A. And the Extension, Lucky Friday Extension.

Q. What's that?

A. The Lucky Friday Extension, those three.

(Testimony of Irene Vermillion.)

Q. The Lucky Friday Extension was organized in that office. What other ones?

A. Now, this is at the time the Extension was organized, is that what you're asking me?

Q. Yes. A. That's all.

Q. 1945?

A. 1945, in the summer of 1945, three.

Q. What?

A. There were three in the summer of 1945.

Q. Three were organized, and what were they?

A. No, I misunderstood you. We had three companies in the office in the summer of 1945.

Q. And they were the Extension——

A. Independence, Montana Leasing.

Q. ——and Montana Leasing and the Independence. Did you have the Coeur d'Alene Mines?

A. No. [174]

Q. When was that organized?

A. The Coeur d'Alene Mines has no connection with this office.

Q. Did you have the Coeur d'Alene Consolidated in the office?

A. We had the Articles of Incorporation and a couple of agreements in 1946, I believe.

Q. Now, in that office you had all of the bank statements, didn't you, from the time of its incorporation, of the Extension? A. Yes.

Q. All of the bank records? A. Yes.

Q. That's right; and they remained there until they were taken over under subpoena by the S.E.C., didn't they? A. No.

(Testimony of Irene Vermillion.)

Q. Or taken over after—that's right—taken over after the directorship changed?

A. If you want to put it that way, yes.

Q. They stayed there, then, until what time?

The Court: Are you speaking of the records of the Extension?

Q. Of the Extension, your Honor.

A. Sometime in December, 1946.

Q. December, 1946? A. Yes.

Q. And the records which came to court here were procured [175] from where, the bank books, do you know, in relation to the Extension, the bank records of the Extension, where did they come from?

A. Our office, I believe.

Q. Yes; that part of the records was kept in your office, then, when the other directors took over, weren't they, the other officers? A. Yes.

Q. That's right, and they were there at all times, weren't they, until they were subpoenaed by the S.E.C.? A. Yes.

Q. That's right; as a matter of fact, Mr. Allen wasn't given access to those records at all, was he?

A. Up until December, 1946, he could have seen them any time he wished.

Q. Isn't it a fact that on a number of times you refused to let him see them?

A. Not up to, say, September, 1946, if he had asked.

Q. Up to when? A. September, 1946.

Q. September, 1946; you hadn't refused prior to

(Testimony of Irene Vermillion.)

that time to permit him to see those books, the bank books?

A. Any time he wanted to he could have seen them.

Q. Did he ever make demand on you prior to that time to see them? [176]

A. Oh, I think he looked at them; I don't recall.

Q. You don't know that he did, though?

A. No formal demand.

Q. As a matter of fact, that financing end, that part of it, the bank records and such, were handled by Mr. Keane, weren't they?

A. They were in that office.

Q. The records were kept by Mr. Keane and his assistants, that's correct, isn't it? A. Yes.

Q. In September, 1946, how many corporations were there in that office?

A. I couldn't say; probably five or six.

Q. You worked as a secretary there?

A. I mean, there were so many, and when you say corporations, do you mean formally formed, or to which they had just——

Q. To which that office had the records.

A. There were several corporations which had the Articles of Incorporation filed with the State of Idaho, but that was all; there was nothing else done with them.

Q. And then there were several where you had the other books, weren't there?

A. There would be one more besides the three I told you before.

(Testimony of Irene Vermillion.)

Q. And which one was that?

A. That was the Pilot. [177]

Q. Just the Pilot and the Extension?

A. That's right.

Q. Didn't you have the books of the Independence there?

A. I misunderstood you. The four, the Montana Leasing, or Lexington, whichever you wish to call it; Independence; Pilot; and Extension.

Q. Delaware didn't have the books there?

A. We had some checks of the Delaware in our safe which had been countersigned by Mr. Allen, I believe, but we had no other records.

The Court: What was that?

A. Checks.

The Court: Of the Delaware?

A. Delaware; I think it's Delaware Mines.

Q. Now, as to the Extension, all corporate records were kept in Mr. Keane's office?

A. Yes.

Q. All bank records were kept there?

A. Yes.

Q. All deposits were made through that office?

A. Yes.

Q. And the checks drawn by you or Mr. Keane?

A. Yes.

Q. No checks were drawn by Mr. Allen?

A. No. [178]

Q. Now, as to the Pilot, after its organization, where was that office kept?

(Testimony of Irene Vermillion.)

A. Mr. Keane's office.

Q. Mr. Keane's office; were the books kept there?

A. Yes.

Q. Bank records kept there? A. Yes.

Q. And bank deposits made by persons in that office? A. Yes.

Q. And checks drawn by persons in that office?

A. Yes.

Q. Mr. Allen had nothing to do with those transactions? A. No.

Q. Now, there's a large number of checks referred to here this morning and yesterday, and on each one of those you were asked who directed you or instructed you to make them, that's true, isn't it, that's pretty much the testimony?

A. As a whole, yes; not specific checks.

Q. And in each case you answered "Allen and Keane" or "Keane and Allen"?

A. That's right.

Q. And of course, you consulted them each time—— A. No.

Q. ——that you wrote a check?

A. No. [179]

Q. Did you consult with them each time you made a deposit? A. No.

Q. You didn't consult them each time that you drew a check requested by Mr. Keane, did you?

A. No.

Q. Or any other checks relating to that business? A. You mean just the Extension?

(Testimony of Irene Vermillion.)

Q. Mr. Keane was your boss?

A. And Mr. Allen, as regards the Extension.

Q. And he was in direct control of that office at all times, wasn't he?

A. Mr. Allen could tell me what to do with the Extension and Montana Leasing Company.

Q. How long have you worked for Mr. Keane?

A. Five years.

Q. Five years; and he's organized quite a large number of corporations during that time, while you were employed by him?

A. There were quite a large number of corporations organized since I've been there.

Q. Yes, and with relation to the Montana Leasing, he didn't organize that, I believe it was a Montana corporation?

A. I don't know. That was before my time.

Q. What?

A. That was before I came there; I don't know about that. [180]

Q. The Montana Leasing was organized before you came? A. That's right.

Q. As to your remuneration after the Extension was formed, how much money were you receiving for your services in that office?

A. From Mr. Keane?

Q. From any source.

A. \$175.00, I think, at that time.

Q. How much?

A. I think \$175.00 at that time.

Q. Exclusive of the stock?

(Testimony of Irene Vermillion.)

A. That's right.

Q. And how was that broken up, how was it paid? A. Just from Mr. Keane.

Q. Mr. Keane paid it; did you receive any checks from the Extension for your services?

A. I just assisted in the Extension. Mr. Evans did the work in the Extension.

Q. Did you receive any checks for your services from that company? A. No.

Q. You didn't receive anything?

A. No, no checks.

Q. The only remuneration you received for your services for the Extension was the stock, is that correct? [181] A. As I say, that's right.

Q. The rest you received directly from Mr. Keane?

A. It was the salary he had started to pay me when I first started to work for him.

Q. What's that?

A. It's the same salary I had received when I first started to work for him.

Q. He didn't raise that?

A. Not at the time of the Extension. I got \$200.00 a month later on, but I can't remember just what month I got that raise in.

Q. But that wasn't paid by the Extension?

A. No.

Q. Nor by the Pilot? A. No.

Q. But Mr. Keane paid you your salary for doing all the work in both these companies?

(Testimony of Irene Vermillion.)

A. No, I didn't do the work in the Extension.

Q. You what?

A. I didn't do the work in the Extension.

Q. Did you do any work in the Extension?

A. A small amount.

Q. Did you keep any books? A. No.

Q. Did you sign any checks? [182]

A. Yes.

Q. What would you do when you signed a check, would you enter it into the stub book?

A. Yes, that's all I did.

Q. That's all you did?

A. Perhaps I had better make that clear; Mr. Evans handled all the stock work, the heavy work of the Extension, and checked the checks that came in, and so forth.

Q. Were you ever an officer in the Extension?

A. I signed, oh, something, as an assistant secretary when Mr. Evans was ill, on two or three occasions, I think it was something for the government, either income tax form or something of that sort.

Q. You don't know what that form was?

A. I think one was to get the unemployment compensation form.

Q. You did sign that as assistant secretary?

A. I did once or twice when Mr. Evans wasn't there; it was just a matter of convenience.

Q. Mr. Allen didn't pay you for that?

A. No one paid me for that.

Q. Didn't direct you to do that?

A. Not specifically.

(Testimony of Irene Vermillion.)

Q. Well, now, did Mr. Allen specifically direct you to do anything?

A. In the office he would come in and tell me to make out [183] certain certificates, call me on the phone; we had a great many phone conversations.

Q. And that was in relation to the issuance of this Grismer stock?

A. To the issuance of stock.

Q. Huh? A. To the issuance of stock, yes.

Q. But that was after all of the first issue had been issued, wasn't it?

A. I'm not clear on what you mean.

Q. You know when the first issue was put out?

A. Yes.

Q. Now, these conversations, as you I think have stated before, were all after that?

A. Yes, I think I didn't issue any stock until after the original offering was completed.

Q. Had been completed? A. Yes.

Q. And those conversations which you have talked about were in relation to the issuance of stock that belonged to Mr. Grismer and which Mr. Allen acquired, or other stock belonging to Keane, is that true?

A. To Mr. Keane's and Mr. Grismer's stock, yes, that's what the conversations were.

Q. What other employments did you follow at that time? [184]

A. Pardon?

Q. What other employment, if any, did you follow at that time?

(Testimony of Irene Vermillion.)

A. I am court reporter for Judge Featherstone since 1945.

Q. From when? A. June 1, 1945.

Q. About the time you were acting as secretary to Mr. Keane? A. Yes.

Q. And you still are? A. Yes.

Q. Now, Mr. Featherstone is one of the stockholders of the Lucky Friday Extension, isn't he?

A. I'm not sure.

Q. You're not sure?

A. No, I don't know. I haven't seen the books for some time.

Q. Huh?

A. I haven't seen the books for some time.

Q. Well, he was for a long time, wasn't he?

A. I don't know how long, but he had some stock.

Q. Did you see Mr.—Judge Featherstone in the office there frequently, in your office, the Keane office? A. No.

Q. Did you know whether or not he was a director associated with Mr. Keane in some companies there, Big Friday, for instance?

A. I don't know anything about the Big Friday. [185]

Q. Don't know anything about it?

A. Just what you read in the newspapers.

Q. Do you know whether Mr. Keane was a director with Mr. Featherstone in any of those corporations?

(Testimony of Irene Vermillion.)

A. He may have been, but I wouldn't know definitely.

Q. You wouldn't know that? He used to come in and consult quite a bit with Mr. Keane, didn't he?

A. I don't think I've seen him in our office more than five or six times.

Q. During what period?

A. During the period I've been there.

Q. Since 1945? A. 1944.

Q. Is that correct? A. Since 1944, yes.

Q. Did you act as secretary for Mr. Keane in connection with the Delaware Mines Company?

A. How do you mean? We never did——

Q. Well, did you make deposits of bank accounts for the Delaware?

A. I occasionally did.

Q. Write up the minutes? A. No.

Q. Write up any other corporate papers?

A. No. [186]

Q. Did you make deposits of smelter checks?

A. Yes.

Q. To the account of the Delaware Mines?

A. Yes.

Q. You did; that's also true of the Montana Leasing? A. Yes.

Q. And the Lexington Silver Lead Mines?

A. Yes.

Q. And when you made deposits of the Delaware Mines Corporation checks what did you enter those in?

(Testimony of Irene Vermillion.)

A. Nothing. We just kept the duplicate stub, or duplicate deposit slip.

Q. You just kept a duplicate deposit slip; and what did you do with those?

A. Just kept them in a book, in their own little book.

Q. Kept them in a book, and that was the record of the Delaware Mines bank account, was it?

A. As far as I know.

Q. You had authority to make deposits?

A. Well, I was directed to make deposits, ordinarily.

Q. And you got the monthly statements?

A. Picked them up, yes.

Q. Now, those are the monthly statements of the Delaware Mines Corporation I'm speaking of.

A. Yes. [187]

Q. You'd get those? A. Yes.

Q. Take them to Keane's office?

A. I picked up all the bank statements with every one connected, yes.

Q. You picked up the bank statements on the Delaware, the Pilot, and the Extension?

A. The Delaware, Pilot, Extension, Independence, F. C. Keane, J. A. Allen.

Q. And kept them in Keane's office?

A. Yes, until Mr. Allen——

Q. They were never picked up by you and delivered to Allen?

A. I would leave his in the Callahan Consolidated office.

(Testimony of Irene Vermillion.)

Q. And whose office was that?

A. Mr. Allen was often in there.

Q. Huh?

A. Mr. Allen always was in there when he was in Wallace.

Q. Well, whose office was that?

A. Callahan Consolidated.

Q. Was that the corporation's office?

A. That belongs to the Callahan Consolidated.

Q. Were there some attorneys in that?

A. That's just a mining company, Mr. Callahan. Miss McLean was in there; is that what you mean?

Q. Yes; who else besides Allen? [188]

A. Mr. Callahan, and Miss McLean, Mrs. French.

Q. Did you ever have the authority from Mr. Allen to sign any checks? A. Yes.

Q. What? A. Yes.

Q. On what company?

A. He told me "You can sign anything any time."

Q. He told you to sign on any of them; when was that?

A. Oh, it must have been sometime in the summer of 1945.

Q. Now, you say possibly?

A. Well, it's sometime during that year; I don't recall the time exactly.

Q. And was that in writing? A. No.

Q. And what was the occasion of his giving you those instructions?

(Testimony of Irene Vermillion.)

A. I think that we were—they were going—Mr. Allen and Mr. Keane were going to Montana, to the Montana Leasing Company.

Q. And when you say “any of the companies” which companies do you mean?

A. Montana Leasing, Extension.

Q. Just Montana Leasing; did you ever have any authority to sign checks for Mr. Allen in connection with the Extension [189] or the Pilot?

A. Yes.

Q. You did; did you ever do so?

A. Yes.

Q. And they were the company checks, were they? A. Yes.

Q. Issued by either one of these companies, the Pilot or the Extension? A. Yes.

Q. How frequently did you do that?

A. I don't understand your question; how frequently did I make the checks? That I wouldn't know; the dates are on the checks.

Q. I want to clarify that. I started out this examination asking if Allen ever gave you authority to sign his name.

A. He once told me I could sign anything, and I have signed it on request for an extension of time in an income tax, and a few things like that.

Q. But not on checks?

A. No, I never used that.

Q. At no time? A. No.

Q. Well, that clears it up; there was a misunderstanding between us. A. I'm sorry. [190]

(Testimony of Irene Vermillion.)

Q. And whenever you made a deposit, a bank deposit, for Mr. Allen, it was by a check of his own which he left, or a check which he endorsed and left with you to deposit?

A. Would you clarify that question? I don't think I understand it. I heard it, but I just don't understand it.

Q. Well, did you ever make any bank deposits for Mr. Allen? A. Quite often.

Q. And those were checks which were made to him or endorsed by him, is that correct?

A. They were made out to him.

Q. Yes, and they were either deposited unendorsed, for deposit, or endorsed by him?

A. Mostly they were—the ones I handled were just endorsed by deposit, I just deposited them.

Q. Yes, that was the only endorsement on them. Now, were you on the board of directors of the Extension at any time? A. No.

Q. Did you attend the directors' meetings?

A. No.

Q. Did you write up the minutes?

A. I don't remember whether there were any.

Q. Huh?

A. I don't remember whether there were any.

Q. Do you know whether or not, to your own knowledge, Mr. Keane was authorized to make investments with the Extension [191] funds?

A. I don't know.

Q. You don't know. Do you know anything in

(Testimony of Irene Vermillion.)

relation to his authority in the Pilot in that regard?

A. No.

Q. Are you or have you been an officer in the past of the Pilot? A. Yes.

Q. When did that office cease?

A. I don't remember. Sometime in the early part of 1947.

Q. Did you attend any meetings of the board of directors of the Pilot?

A. Oh, I took the minutes of the first meeting.

Q. Just the first meeting; that was the organization meeting?

A. Yes, I guess you'd call it that.

Q. And did you take the minutes of that?

A. Yes.

Q. They were kept correctly?

A. As far as they went.

Q. To the best of your ability; and do you remember who attended that meeting?

A. No, I really don't.

Q. You don't remember. Now, when did you cease being an officer of the Pilot?

A. Well, I think it was the early part of 1947; I'm not sure. [192]

Q. Huh?

A. I think it was the early part of 1947; I'm not sure of the date.

Q. Did you resign?

A. Yes; very happy to.

Q. And who instructed you to resign?

(Testimony of Irene Vermillion.)

A. Mr. Keane.

Q. Mr. Keane?

A. Mr. Keane and I resigned at the same time.

Q. And he resigned at the same time?

A. Yes, I typed up both resignations.

Q. And the books of the corporation, with the exception of the bank books, were then turned over to Mr. Allen, weren't they?

A. Well, they were taken into the Callahan Consolidated office, yes.

Q. Was Mr. Allen there at that time?

A. I don't remember whether he was or not.

Q. Isn't it a fact that your resignation and Mr. Keane's resignation came about by reason of the fact that Mr. Keane refused to permit Mr. Allen to see the bank balances and the books of account of that corporation?

Mr. Stocking: We'll object to that as improper cross-examination. I don't think we touched on that in the direct. [193]

The Court: Just a moment; if it was on account of some action of hers, whether it touched or not, it would be proper as going to her interest, but I'm not at all clear that she can be cross-examined on something she didn't testify concerning on direct, when it applies to somebody else. I'm inclined to think the objection is well taken.

Mr. Emigh: She was an officer, your Honor.

The Court: I know, but you're asking her if Mr. Keane had refused to do something. She

(Testimony of Irene Vermillion.)

wasn't examined on that on direct. It doesn't go to her personal interest.

Mr. Emigh: May I reframe that question?

The Court: You may put another question.

Q. (By Mr. Emigh): Isn't it a fact that the officers of the corporation had refused, including yourself, had refused to permit Mr. Allen to see the bank balances and the bank books of that corporation, which led about to the demand of your resignations?

A. Mr. Allen never asked me for them.

Q. He never asked you to see the bank balance?

A. Mr. Grismer came in and asked in his name.

Q. Mr. Grismer did? A. Yes.

Q. And you refused to permit him——

The Court: Which company is this, the Extension or [194] the Pilot?

A. I think we're on the Pilot right now.

Q. Mr. Grismer did? A. Yes.

Q. And you refused to permit him?

A. Yes.

Q. That's correct? A. Yes.

Q. And was he an officer or director of the company at that time?

A. I think he was manager.

Q. Manager?

A. That is, he went up to the mine, and so on.

Q. Was he a stockholder? A. Yes.

Q. He was a stockholder; and then you refused

(Testimony of Irene Vermillion.)

to permit a stockholder to see the records at that time? A. I refused Mr. Grismer.

Q. And he was a stockholder? A. Yes.

Mr. Emigh: May we have a recess at this time, your Honor?

The Court: Yes, there will be a ten minute recess.

(Short recess.)

(All parties present as before, and the trial was [195] resumed.)

Cross-Examination

(Continued)

By Mr. Emigh:

Q. Calling your attention to Plaintiff's exhibit 14 for identification, I'll ask you if you made the deposit shown on the first sheet? A. No.

Q. In January, 1946, and particularly prior to the 4th day of January, 1946, I believe that you and Mr. Keane were the only ones who had access to the bank account?

A. What are we talking about now?

Q. The bank account of the Extension.

A. You mean we were the only ones that signed the checks?

Q. No, had the access to the account, the ones that were in charge of that account, you got the statements and deposited the checks and those things?

A. Well, access isn't the word I'd use. We were

(Testimony of Irene Vermillion.)

the ones that wrote the checks and deposited and picked them up, but Mr. Allen could have seen them any time he wished, is that what you want to know?

Q. I want to know if you could see it any time you wished? A. Oh, yes.

Q. The financial statement? A. Oh, yes.

Q. And I'll ask you if on the 4th day of January, 1946, you prepared a financial statement of the Extension showing a [196] bank account of \$51,047.92?

A. No, I never prepared any financial statements.

Q. Did you type it? A. I don't recall it.

Q. You don't recall it? A. No.

Q. You wouldn't know whether you typed it or not? A. Not without seeing it.

Mr. Emigh: Have you got that statement here, please?

Mr. Stocking: I'll get it for you. I'll have them get it.

Mr. Emigh: He's getting that exhibit, your Honor please.

Q. Were you familiar with the Clayton Silver Mines in 1945?

A. No—what do you mean by familiar? I knew that there was such a place.

Q. Well, do you know about their offices, and where they were? A. Yes, I knew that.

Q. Was that adjoining your office?

A. For a short time.

(Testimony of Irene Vermillion.)

Q. And when was that?

The Court: What company was this?

A. Clayton Silver Mines. [197]

Q. And Mr. Keane, was he an officer in that?

A. No, I don't believe so.

Q. Was Mr. Featherstone, to your knowledge?

A. I think he was.

Q. And at that time did the Independence Lead Mines have an office in Mr. Keane's office?

A. Yes.

Q. Huh? A. Yes.

Q. And he was president of that, was he?

A. Mr. Keane?

Q. Yes. A. Yes.

The Court: What company was this?

A. Independence Lead Mines.

* * *

(Whereupon, statutory statements filed by Extension with State of Washington were marked Defendant's Exhibit "A" for identification.)

Q. I'll call your attention to Defendant's exhibit A, for [198] identification, and ask you to look at that carefully and state whether or not that is an instrument which you typed at the request of Mr. Keane or Mr. Evans?

A. Just this much, or all through the whole thing?

Q. Yes. A. None of that is my typing.

(Testimony of Irene Vermillion.)

Q. You had nothing to do with that exhibit, preparing it?

A. There's some copies of the Articles of Incorporation in there.

Q. The forms which have been filled in blank, are any of these typed by you? A. No.

Q. And the sheets in here prepared as to copies, those copies, that is, where they're typewritten pages, may have been prepared by you, is that what you're driving at, the Articles of Incorporation?

A. Well, that would be the only thing I might have.

Mr. Stocking: We'll have no objection to the exhibit being offered in evidence. We'll stipulate as to its identification.

Mr. Emigh: I don't believe for the purpose of this examination it would be competent.

A. No, that isn't our machine; I didn't type that.

Q. You had nothing to do with that, know nothing about it, the preparation of it, know nothing about typing it? [199] A. No.

Q. Did you secure the information which is given in this? Did you furnish that information to somebody who did type it? A. I don't know.

Q. You mean you don't remember, or didn't know? A. That's it, I don't remember.

Q. Do you know whether or not this is typed on the typewriter in your office?

A. No, that print is too small for ours.

Q. Did you have anything to do with this exhibit so far as you know?

(Testimony of Irene Vermillion.)

A. Well, yes, I see my name on it.

Q. You see your name on it; you signed an oath to that certificate, didn't you, to that exhibit?

A. Yes.

Q. In that oath you swore that you are of lawful age, that you had read the statements contained in that instrument, and they were true, didn't you?

A. Yes, if that's what it says.

Mr. Emigh: We offer defendant's exhibit A for identification in evidence.

Mr. Stocking: We have no objection.

The Court: It will be admitted.

(Whereupon, Defendant's Exhibit A for identification was [200] admitted in evidence.)

Q. At whose request did you sign this, Mrs. Vermillion? A. I think it was Elmer Johnston.

Q. You think it was?

A. I can't be specific. I remember the circumstances——

Q. To refresh your memory——

Mr. Stocking: Just a moment, let her finish her answer, if the Court please.

A. I remember the circumstances, the reason I signed it, but I don't recall just who asked me to sign it.

Mr. Emigh: At this time, may it please the Court, the defendant offers in evidence that portion of page 1 of Plaintiff's exhibit 7 for identification relating to the balance in the bank of the Lucky Friday

(Testimony of Irene Vermillion.)

Extension on the 29th day of December, 1945, and the 3rd day of January, 1946.

Mr. Stocking: We prefer to have the whole exhibit admitted, your Honor.

The Court: Well, forgetting preference, do you object to this?

Mr. Stocking: I don't think we can make any objection to the portion of it.

The Court: Well, the portion will go in.

Mr. Emigh: We're only offering the portion.

The Court: The portion offered by the defendant admitted, no objection by the government.

(Whereupon, bank statement, Extension Company, January, 1946, was marked Defendant's Exhibit B.)

Q. Mrs. Vermillion, the first time I asked about your signature it was in relation to a document that seems to terminate—there doesn't seem to be any page numbers on this. One is exhibit 7, and the other one here again, that is also your signature, as of date May 1, 1946? A. Yes.

Mr. Emigh: Ladies and gentlemen of the jury, Defendant's Exhibit A, the portion of it which at this time is called to the attention of the jury, is a page, if I can find it again, marked exhibit 7, and to which is appended—I've lost my place again.

Mr. Stocking: I think it's referred to as the annual statement.

Mr. Emigh: Well, there's a question of how

(Testimony of Irene Vermillion.)

much of this is one sheet and how much another. I hope the Court will bear with me. I didn't have it marked, so I can't keep my place. It is part of an annual report of Metalliferous Mining Company, and Annual Statement, which has a stamp "Received May 7." It refers to the Lucky Friday Extension Company, address Gyde Taylor Building, Wallace, Idaho, for the year ending December 31, 1945. [202] Among the information contained in that sheet is a statement of assets of the corporation, under the heading cash, are the figures \$51,077.92, and that instrument has the following oath attached: "State of Idaho, County of Shoshone, ss. Joseph V. Grismer, President, and Irene Vermillion, Asst. Secretary of the Lucky Friday Extension Mining Company, of lawful age, being first duly sworn, depose and say they have each read the foregoing statements and know the contents thereof, and that the statements and allegations therein contained are true." Signatures J. V. Grismer, President, Irene Vermillion, Assistant Secretary. The Assistant is abbreviated "Asst." "Subscribed and sworn to before me this 1st day of May, 1946. My commission expires Sep. 29, 1948. James E. Gyde, Notary Public in and for the State of Idaho, residing in Wallace, Idaho."

That portion of Plaintiff's exhibit 7 for identification which has now become Defendant's exhibit B, admitted in evidence, is a bank statement from the Wallace Branch of the Idaho First National

(Testimony of Irene Vermillion.)

Bank, Wallace, Idaho. "Lucky Friday Extension, c/o F. C. Keane, Wallace, Idaho." On the first line of that statement, under the item, "The last item in this column is your balance" December 29, 1945, \$9,333.92. The next line is January 3, 1946. Under the item "Balance" are three items. The balance item is [203] \$2,000.00, another item is \$122.80, another item is \$163.20, and over in the right hand, last item in this column is your balance, January 3, 1946, \$7,047.92. I think that's all.

Redirect Examination

By Mr. Stocking:

Mr. Stocking: Referring to Defendant's Exhibit A, and attached to the annual statement, gentlemen of the jury, to which counsel just referred, is the following letter dated May 4, 1946: "Director of Licenses, Olympia, Washington. Re: Lucky Friday Extension Mining Co. Dear Sir: Herewith please find verifying annual statement prepared by this company pursuant to the Metalliferous Mining Act of Washington for your examination and files. I also enclose herewith \$5.00 fee in connection with the filing of this statement. If the statement meets the requirements of your office, kindly have the same duly accepted and filed and return two copies to this office in the usual manner. Yours very truly, Elmer E. Johnston" and it's written on the stationery of Elmer E. Johnston, Attorney at Law, Symons Building, Spokane, Washington.

Q. Mrs. Vermillion, what were the circumstances

(Testimony of Irene Vermillion.)

of your signing this Metalliferous Mining Company annual statement, which is contained in Defendant's Exhibit A, if you recall?

A. Mr. Johnston prepared those statements in his office, or [204] at least we had never received the forms in our office, and that particular form was mailed to Mr. Keane's office, and I was told to have Mr. Grismer and Mr. Evans sign it, because it was important that it be mailed in before a certain date; I don't recall the date.

Q. And who gave you those instructions?

A. I believe Mr. Johnston.

Q. Was that verbal or written?

A. I couldn't find any letter, so it must have been—it may have been verbal. He often phoned me; but Mr. Evans was very ill, he suffered a cerebral hemorrhage, and was very ill. We went down to the hospital, Mr. Grismer and I, and took Mr. Gyde along to see if we could get Mr. Evans to sign that, but he was so ill that he couldn't sign it, he was very ill, they didn't think he was going to live, so we came back, Mr. Grismer signed it, and they asked me to sign it; I don't recall whether it was Mr. Grismer or Mr. Keane asked me to sign it as assistant secretary so that we could get that filed on time, and I did.

Q. And did you have anything to do at all with the preparation of the figures that went into the statement?

A. No, not that I recall.

Q. Did you at that time attempt to determine

(Testimony of Irene Vermillion.)

what the cash assets of the company were as of December 31, 1945?

A. No; this came in in the afternoon, and we had about just a [205] few minutes before train time. It was just a big dash.

Q. Had you up to that time acted in any capacity as an officer of the company in preparing any of the financial information which had been furnished to the State of Washington? A. No.

Q. For the Extension Company? A. No.

Mr. Stocking: I'll call the attention of the jury to another portion of this Defendant's Exhibit A, being a statutory statement filed by a Metalliferous Mining Company bearing the stamp "Received January 22, 1946" and the statement shows "Date filed, January 31, 1946" and referring to the exhibit 7 of that statutory statement, the figure under amount "Cash in Banks, \$51,047.92" under the heading "Statement of Assets and Liabilities as of the 5th day of January, 1946" this figure corresponding to the figure on the other exhibit with the exception that it is \$51,047.92 where the other figure is \$51,077.92.

Q. I'll ask you, Mrs. Vermillion, if you had anything to do with the preparation of this statutory statement which was filed in January, 1946?

A. Not that I recall.

Q. And your signature does not appear at the end of that statement? [206] A. No.

Q. Did you ever make an audit of the Extension

(Testimony of Irene Vermillion.)

books at any time that you were handling their checking account and banking account?

A. No.

Q. Do you know if any such audit was ever made during that period and prior to the 1st of May, 1946, when you signed this paper?

A. I don't know of one.

Q. You hadn't seen a balance sheet prepared by anyone at that time, is that correct?

A. That's correct.

Q. Referring to the books of account to which you made some reference in Mr. Emigh's cross-examination, were there any other books of account for either the Extension or the Pilot than the records which appear here and have been identified and offered in evidence?

A. Yes.

Q. What books were they?

A. There was a stock ledger which recorded the transfers of stock.

Q. And were there any other books, to your knowledge?

A. No, not to my knowledge.

The Court: What do you call that?

A. Stock ledger, stock transfer ledger. [207]

Q. There were no other books which reflected the receipt and disbursement of funds?

A. No.

Q. And that's true as to both Pilot and Extension?

A. Yes.

Q. What is your statement as to whether or not, until the time when you resigned as an officer of the

(Testimony of Irene Vermillion.)

Pilot Company, there had ever been an audit made of the corporation's books, of the Pilot books?

A. I don't recall one.

Q. To your knowledge no such audit has ever been made, is that correct?

The Court: That's the Pilot?

Q. The Pilot books, when she resigned. When you answered Mr. Emigh on cross-examination to the effect that you had no conversations with Mr. Allen until after the original stock was issued, specifically what were you referring to, Mrs. Vermillion?

A. To the issuance of stock in that so-called "street stock" in Mrs. McLean's and my name.

Q. You're not referring to any conversations you may have had with him concerning instructions as to issuing checks?

Mr. Emigh: Just a minute; that's objected to as leading and suggestive.

The Court: Overruled. [208]

Mr. Emigh: And not proper redirect examination.

The Court: Overruled.

Mr. Emigh: Exception.

A. I had instructions on checks as regards Montana Leasing Company long before that.

Q. And had you ever had any instructions with regard to Extension prior to the time that the original issue of stock was completed?

Mr. Emigh: Same objection, on the ground it's

(Testimony of Irene Vermillion.)

leading, suggestive, indefinite as to persons involved, and not proper redirect examination.

The Court: Let me hear the question.

(Whereupon, the reporter read the last previous question.)

The Court: Overruled; you may answer.

A. I'm trying to think of how to, Judge. I really don't remember definitely.

Q. You stated on cross-examination that you made some deposits of funds for Mr. Allen. Do you recall what checks those were, where those checks came from, who was the issuer of those checks?

A. From Mr. Keane and the Montana Leasing.

Q. And those were deposits that you made for Mr. Allen in his personal account? A. Yes.

Q. To your knowledge did either the Pilot or the Extension Company ever hold a directors' meeting when you were connected with those companies, with the exception of the meeting at which you resigned in Pilot?

A. Not in the sense of formal meetings, that I know of, no.

Q. Were minutes ever prepared of any meetings that were held?

A. Just the one in the Pilot that I mentioned.

Q. And did the company ever keep a minute book, either company ever keep a minute book?

A. Keep them as to date, you mean?

Q. Yes. A. No.

(Testimony of Irene Vermillion.)

Q. You testified on cross-examination that you did refuse to give the Pilot records to Mr. Grismer in the fall of 1946. Who if anyone gave you instructions to refuse those records to Mr. Grismer?

A. Mr. Keane and Mr. Allen both specifically gave me instructions never to give Mr. Grismer anything.

Q. And did that apply to—which corporation, or did it apply to both?

A. That applies to both.

Q. Both Pilot and Extension? A. Yes.

Mr. Stocking: That's all. [210]

Recross-Examination

By Mr. Emigh:

Q. Mr. Keane and Mr. Allen——

A. Yes.

Q. ——gave you instructions—— A. Yes.

Q. ——not to give Mr. Grismer any information?

A. Yes.

Q. When were those instructions given to you?

A. Sometime I believe, in one definite one, in Extension, sometime in August of 1946. Mr. Grismer came in and wanted to look at some—oh, he wanted to look at the stock bonds, and I mentioned that to Mr. Keane and Mr. Allen, and Mr. Allen said never to give that Dutchman anything, except there were a couple of words that I omitted.

Q. Isn't it true that beginning in October, 1946, that Mr. Grismer and Mr. Allen made repeated

(Testimony of Irene Vermillion.)

demands upon Keane to make a disclosure of this bank account?

A. I don't know what they made upon Mr. Keane.

Q. What?

A. I don't know what demands they made upon Mr. Keane.

Q. You don't know?

A. I wasn't present at any time when they made demands on Mr. Keane, that I recall.

Q. You don't know anything about that. Did Mr. Grismer or [211] Mr. Allen make demands on you?

A. Mr. Grismer made demands on me.

Q. Isn't it a fact Mr. Allen did?

A. I don't remember that he ever did.

Q. You don't remember; he may have?

A. I don't remember that he ever did.

Q. Now, what records did the Extension keep in relation to the bank accounts?

A. I don't understand you.

Q. What records did the Extension keep in relation to bank accounts?

A. Just the bank statement and the bank book—and the check book.

Q. Who went to the bank and got that statement?

A. I brought them back.

Q. And I think you have testified here that when you brought them back you checked them against the checks which accompanied the statements, that's correct, isn't it?

A. Just to see the outstanding checks, that's all.

(Testimony of Irene Vermillion.)

Q. And of course thereby you became familiar with the balance that you had from month to month? A. Yes.

Q. As disclosed by the only record the company had? A. That's right.

Q. Now, when you signed this affidavit that on December 31, [212] 1945——

Mr. Stocking: Just a moment; I object to that, your Honor. She didn't sign it on December 31, 1945.

Q. (Mr. Emigh, continuing): ——that as of December 31, 1945, you got that, Mr. Reporter, that as of December 31, 1945, the bank balance of the Lucky Friday Extension Mining Company was \$51,077.92—— A. Yes.

Q. ——at that time you had received the——been the person that went to the bank and got the balance for the month of December, showing the balance there, hadn't you? A. Yes.

Q. And when you signed that you read the affidavit?

A. I don't believe that I did. It was in a rush.

Q. You knew it was being sworn to before a notary public—— A. Yes.

Q. ——Mr. Gyde, and it was sworn to before a notary public? A. Yes. It's right at the end.

Mr. Emigh: That's all.

Redirect Examination

By Mr. Stocking:

Q. As a matter of fact, Mrs. Vermillion, a large

(Testimony of Irene Vermillion.)

sum of money came from the brokers, as disclosed in plaintiff's exhibits 1, 2 and 3, during the month of January, 1946, into the Extension account, isn't that correct?

Mr. Emigh: Just a moment—— [213]

The Court: Just a moment; is there objection?

Mr. Emigh: It's apparently subsequent to the time of this statement, objected to as incompetent, irrelevant and immaterial, what came in later; this is a statement as to a balance that existed on a specific date.

Mr. Stocking: Yes, of course; the point is, your Honor, that her signature was put on here four months——

The Court: Well, you may ask her, counsel; I say you may ask her. I think you had better redraw the question.

Q. (By Mr. Stocking): Do you know whether or not substantial sums came from underwriters in connection with the second offering of Extension stock in the month of January, 1946?

A. Yes.

Mr. Emigh: To which the defendant objects that in relation to this examination it's incompetent, irrelevant, and immaterial, not proper redirect examination, and an attempt by this examination of this witness to impeach her own oath signed, and her testimony heretofore given.

The Court: Objection overruled. The jury is entitled to all of the evidence, to determine whether or not——

(Testimony of Irene Vermillion.)

Mr. Emigh: Exception.

The Court: —under all the circumstances the witness had any reason or if she's making any explanation [214] for what she signs; I mean all the facts. Objection overruled.

A. We received those checks in January, 1946.

Q. That was substantially about \$78,000, was it not, according to these checks, is that your recollection?

A. Well, I don't recall. It was quite a substantial sum, but I don't remember definitely.

Q. Do you know whether or not you had any independent recollection on May 1, 1946, without some examination of the accounts, as to what the balance was on any specific date or any specific month?

A. No.

Mr. Stocking: That's all.

Recross-Examination

By Mr. Emigh:

Q. Now, of course when you passed that figure, you saw that figure in there when you signed that, of course?

A. I suppose I did.

Q. Well, did you?

A. I must have, yes.

Q. Yes, you knew it was there, and you knew that these big sums didn't come in until after January 1, didn't you?

A. I don't think I even thought about it.

Q. You don't think you ever thought about it?

A. Not at the time.

Q. And because you knew about these big sums

(Testimony of Irene Vermillion.)

that had come [215] sometime, that isn't why you signed this statement stating that the balance on January 1 was \$51,077.92?

A. The only reason I signed it was because we were evidently quite late in getting that in, and it was important that it get back to that department in Olympia.

Q. Did you know you were signing a false statement?

A. No, I didn't place—I didn't know anything about it, actually.

Mr. Emigh: That's all.

Redirect Examination

By Mr. Stocking:

Q. Well, you read it, that's correct?

A. No, I actually didn't read it.

Recross-Examination

By Mr. Emigh:

Q. You just told us you saw that figure; how did you see it if you didn't read it?

A. At a glance.

Q. And you saw it was a cash balance as of December 31, 1945, didn't you?

A. Yes, I did know that.

Mr. Emigh: That's all.

(Whereupon, there being no further questions, the witness was excused.)

CHARLES E. HORNING

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Erickson: [216]

Q. Will you state your name, please?

A. Charles E. Horning.

Q. And where do you reside, Mr. Horning?

A. Wallace, Idaho.

Q. What is your business?

A. I'm a lawyer.

Q. You're a member of the bar of the state of Idaho?

A. Yes, sir.

Q. And how long have you practiced law in Wallace?

A. 33 years this month.

Q. 33 years this morning?

A. This month.

Q. Well, Mr. Horning, are you engaged in any capacity with the Lucky Friday Mining Company? Not the Lucky Friday Extension, but the Lucky Friday Mining Company?

A. It's the Lucky Friday Silver Lead Mines Company. Yes, I am.

Q. And in what capacity are you employed by the Lucky Friday Silver Lead Mines?

A. I am vice president of the company, and I have been its attorney since its incorporation.

Q. And when was it incorporated?

A. 1939.

Q. And are you acquainted with the Lucky Friday Extension Mining Company? [217]

(Testimony of Charles E. Horning.)

A. Well, I know what it is, yes.

Q. And did the Lucky Friday Silver Lead Mining Company enter into any contract with the Lucky Friday Extension Mining Company?

A. It did.

Q. And where, with reference to the Lucky Friday Mining Company; is the Lucky Friday Extension Mining Company?

A. Immediately to the west and to the northwest.

Q. And I'll ask you if the matter of a contract was discussed between the Lucky Friday Extension Mining Company and the Lucky Friday Silver Lead Mines?

A. Was it discussed?

Q. Was it discussed, yes. A. Yes.

Q. And was it discussed with you?

A. Yes, it was.

Q. And by whom representing the Lucky Friday Extension Mining Company?

Mr. Emigh: Just a minute; we object to this as calling for a conclusion of the witness, as to the capacity.

The Court: Overruled.

Mr. Emigh: Invading the province of the jury in the determination of a matter which might become very important in this case, as to authority and so forth. I [218] think the facts should be given, and not the conclusions as to authority.

Mr. Erickson: Well, that's what I was going to ask for, counsel. This is preliminary.

The Court: He was asking who.

(Testimony of Charles E. Horning.)

Mr. Emigh: —represented the corporation; that's the point we object to.

The Court: Well, it will be for the jury to determine in what capacity the person represented the corporation. He may state. Objection overruled.

Mr. Emigh: Exception.

The Court: You may read the question, Mr. Reporter.

(Whereupon, the reporter read the last previous question.)

A. I think I handled all of the discussions on behalf of our own company, and many of my discussions concerning the contract which was finally entered into were with Mr. Allen principally.

Q. And in what capacity did Mr. Allen say that he was acting, in behalf of himself, or in behalf of some corporation?

A. Well, he was the principal negotiator on behalf of the Lucky Friday Extension.

Q. And can you fix the time when this discussion occurred?

A. Do you mean as to an exact date?

Q. Well, as to the approximate date. I know you can't fix [219] the exact date.

A. Matter of fact, the discussions covered a period of a number of weeks, as is usually the case in a contract of that character.

Q. And were there a number of discussions, Mr. Horning? A. Oh, yes.

(Testimony of Charles E. Horning.)

Q. Could you estimate the number of discussions you had with Mr. Allen?

A. That's right, there were two contracts. There was an original contract, and then subsequently, a few months later, a supplemental contract. I can fix the—I'll do the best I can to give you the time of those discussions.

Q. Yes.

A. I can give you the period within which they occurred.

Q. Well, give us the period.

A. I would say from perhaps early in May——

The Court: What year?

A. ——1945, up until the date the original contract was signed up, which was June 30, 1945; then it became necessary to have a supplemental agreement between the same two companies. That required some further discussions. That agreement was signed on October 1, 1945.

Q. Well, now, Mr. Horning, did you prepare the contract yourself, or not? A. I did. [220]

Q. And after the contract was prepared state whether or not it was forwarded to Mr. Allen, the defendant in this case, or copies of it?

A. That's correct; they were drawn, they were prepared in what we call the rough, first, not ready for signatures. The rough drafts were submitted to Mr. Allen and Mr. Keane for their approval, then finally the finished product, ready for signature, was likewise submitted to them.

(Testimony of Charles E. Horning.)

Q. Well, after Mr. Allen saw the original contract did he call you on the telephone?

A. Yes.

Q. And what was the substance of that telephone conversation with Mr. Allen?

A. He called me a number of times. I remember one in particular, in which he complimented me on the contract, said it was a masterpiece.

Q. That was the original contract?

A. That's right.

Q. And the supplemental contract, was that forwarded to Mr. Allen?

A. Whether it was forwarded to him or handed to him in Wallace, I couldn't say.

Q. Did he discuss that with you? A. Yes.

Q. And what did he say about that contract, if anything? [221]

A. To answer that question fully and properly I think I should make a little explanation.

Q. Yes.

A. Of the necessity for it. The original contract between the two companies provided for certain development work to be done by our company for the Extension Company, but at their expense, that work to be done on our one thousand foot level. We had our shaft down to that depth at that time. Subsequent to the execution of that contract another company came in, wanted to go in on the development program. They wanted to sink an additional 400 feet. That's why the supplemental

(Testimony of Charles E. Horning.)

agreement, the second agreement, was necessary between our company and the Extension. The Extension Company as I understood it in the meantime had issued their prospectus which didn't call for sinking. Mr. Keane's idea was that they might get in bad with the S. E. C. if they now signed that supplemental agreement and agreed to go to the expense of sinking 400 feet, where they hadn't announced in the prospectus they were going to. Mr. Allen felt that since they were doing more work than the prospectus had said they were going to do, that the S. E. C. couldn't have any objection. Now, does that answer your question?

Q. Yes, that answers the question. Mr. Allen did not sign either of the contracts, did he? [222]

A. That's correct, he did not.

Q. With reference to the time of the formation of the Lucky Friday Extension Company, did any of these discussions about the contract take place prior to that time?

A. Oh, I couldn't say as to that. They took place prior to the location of their claims. Their claims were located some in May, some very early in June, 1945. I would say that the discussions started prior to that time. I don't remember the date their company was incorporated.

Q. How much money did the Lucky Friday Extension Mining Company pay the Lucky Friday Silver Lead Mines for this work?

A. How much?

(Testimony of Charles E. Horning.)

Q. Yes, approximately.

A. Well, I haven't the figures, Mr. Erickson, and I am not the secretary-treasurer of our company, but I think I'm correct in saying that it was in the neighborhood of seventy-five or eighty thousand dollars. There was a great deal of work done.

Q. And the two companies then were to share mutually in the ore that was uncovered?

A. Our company and the Extension, yes, in any ore discovered through this work in their ground to the west and north of us.

Q. Now, with reference to a fishing trip that took place, [223] and which yourself and Mr. Keane went on, on August 7, 1945, did you check up on that fishing trip, from your records?

A. For the date?

Q. Yes. A. Yes, I did.

Q. And did you make the arrangements for that fishing trip?

A. I made the arrangements, invited those who——

Q. Give the details of that.

A. How it came about, and so forth?

Q. Yes.

A. The Hecla Mining Company was to hold a directors' meeting here in Spokane on Monday, August 6, 1945. One of their directors was a gentleman by the name of George Meyer, from Milwaukee, quite an ardent fisherman. I was asked in advance of that meeting if I would arrange for a

(Testimony of Charles E. Horning.)

fishing trip upon which we might take him following their directors' meeting. I did that; I had a friend who owned a very nice little hunting lodge over on the St. Joe River. I wrote to him about July 1, 1945, and spoke for the cabin that far in advance because it was quite in demand, then I arranged for——

Mr. Emigh: Pardon my interruption; I don't think this is responsive to any question, now. It's just a rambling statement of the witness. [224]

The Court: Let's have the question.

(Whereupon, the reporter read the question as follows: "Give the details of that.")

Mr. Emigh: He's back in July, now. He'll be back to Christmas pretty soon.

The Court: Well, the question as put allows a lot of latitude. You didn't object to the question; you're objecting to the answer that the question invited. If he gets back to Christmas I'll interfere.

A. I won't go back that far. I arranged for the cabin and got it for the week beginning August 7, 1945. I checked up on my correspondence with the owner of the cabin, and satisfied myself as to that date. I've checked up down here in Spokane at the Spokesman-Review reference library, I believe they call it, this morning, just to make doubly certain, and I found that the Hecla directors' meeting was held in Spokane on August 6, 1945. I remember very distinctly that we went on that trip the following morning.

(Testimony of Charles E. Horning.)

Q. And how long did Mr. Keane stay?

A. Oh, we were out there three or four days, if I remember correctly.

Q. And do you remember when you went and when Mr. Keane went? A. When?

Q. When; what time of the day?

A. Well, I went in a car that followed the grocery truck. Mr. [225] Keane and Mr. Sekulic arrived at the place very shortly after I did.

Mr. Emigh: We object to this as not being responsive.

A. Early in the morning.

Mr. Emigh: He can state the time. This is not cross-examination.

A. Early in the forenoon.

Q. Did you arrive before Mr. Keane?

A. Before noon, oh, yes.

Q. Did you arrive prior to the time that Keane arrived? A. Perhaps half an hour.

Q. What time did you arrive there?

A. I'd say about the middle of the forenoon. It's a forty mile drive over there on a narrow winding mountain road, so we left Wallace pretty early.

Q. What time did you leave Wallace?

A. Well, you're asking me for a detail now that I can't give you. We left early that forenoon.

Q. I see. It was a forty mile drive over this narrow winding road from Wallace to the cabin?

A. A little better than forty, yes.

(Testimony of Charles E. Horning.)

Mr. Erickson: That's all.

Cross-Examination

By Mr. Emigh:

Q. It's an automobile road? [226]

A. Oh, cars get over it, yes.

Q. Huh?

A. I say, yes, we use it for an automobile road.

Q. What time of day did you leave?

A. That morning? You're going to have to make me guess. I just said I can't fix the exact hour; I'll do the best I can if you want me to.

Q. How many mining companies were involved in this contract for development?

A. Only—in the development program, or in this particular contract?

Q. Well, the development program you were just talking about.

A. The Lucky Friday Silver Lead Mines Company, that's the one I refer to as our company, the Lucky Friday Extension, and the Hunter Creek Mining Company; three.

Q. Now, the Hunter Creek was the company that Mr. Allen represented, wasn't it, Mr. Horning?

A. Pardon?

Q. The Hunter Creek was the company that Mr. Allen represented? A. No.

Q. Who did you negotiate with in relation to the Hunter Creek?

A. With Mr. Dunlop and Elmer E. Johnston, and their engineers.

(Testimony of Charles E. Horning.)

Q. Isn't it a fact that Mr. Allen was as active in that as he was in the other contract? [227]

A. No.

Q. As far as the negotiations were concerned?

A. No.

Q. Wasn't this a development program that he had conceived for that group of mining claims in there?

A. The Hunter Creek Mining Company, its development was to be in exactly the opposite direction from the Lucky Friday Extension's; no relationship between the two.

Q. No relationship? A. No.

Q. Were you a director in the Lucky Friday Extension? A. Extension? Never.

Q. Ever hold stock in it?

A. A very small amount.

Q. Well, how much?

A. I think I probably have 14,000 shares now. I had a little more at one time, and I sold it, and when I could see the Extension Company going to the bad, I gave the money back and took my stock; that's the way I happened to have a little more.

Q. How much more did you have before you sold?

A. I sold 10,000 shares to each of three of my friends. One of them I gave his money back in full. He gave me the stock back. I still have it. Another one had sold a little of his, and I gave him back the difference. The [228] third one, I offered his

(Testimony of Charles E. Horning.)

money back to him, and he said no, he was full grown when he bought it, and he'd stay with it.

Q. From whom did you purchase those stocks?

A. From whom did I purchase them?

Q. Yes.

A. They came to me out of a block of stock which Mr. Sekulic received in consideration of some ground which he turned in to the Lucky Friday Extension.

Q. That was stock paid for by purchase of property? A. That's right.

Q. That's some of the original stock, is that right?

A. Well, I assume that that's right, yes.

Q. Original issue? A. I think so.

Q. And that property was purchased from Mr. Sekulic, was it not, by the Lucky Friday?

A. You mean by the Lucky Friday Extension?

Q. Extension, yes.

A. Purchased by them? One small patented tract which had been homesteaded by other parties and from whom Mr. Sekulic had acquired it the year before was conveyed to the Lucky Friday Extension. There were four, I think four, other claims lying to the west of our property which Mr. Sekulic had held by location off and on since about [229] 1930. He used to call it the Mullan Mining Company, although it was not incorporated. Mr. Sekulic permitted the Lucky Friday Extension Company to

(Testimony of Charles E. Horning.)

go on and relocate that ground instead of his doing it himself.

Q. Did you ever talk with Mr. Sekulic about this proposed contract of development?

A. Did I?

Q. Yes.

A. Oh, yes, certainly. He was president of our company; I naturally would.

Q. I didn't get that.

A. He was president of the Lucky Friday Silver Lead Mines.

Q. And you talked with him a good deal before that was executed, that contract, didn't you?

A. I talked with him a great deal, same as I talked with Mr. Allen a great deal; some with Mr. Keane.

Q. Did you ever talk with Mr. Keane?

A. Yes, to some extent.

Q. And you say you talked with Mr. Allen?

A. Oh, yes, yes.

Q. Mr. Allen's part of the thing was to point out the advantages of a development of that kind, wasn't it?

A. Oh, I don't think he did that. We all knew what the advantages were; they didn't have to be discussed. He discussed the terms and conditions of the agreement. It [230] was quite a long agreement. It was going to involve the expenditure of a lot of money. It involved the doing of a lot of work. Those were the things we discussed, to agree

(Testimony of Charles E. Horning.)

on the terms. That wasn't done in a day; it wasn't done in a week. Those contracts never are. I imagine those discussions of the terms and conditions in detail covered a period of a number of weeks. I've had agreements of that kind that covered three months before the parties would get together. That's the sort of thing that was discussed with him.

Q. Now, you knew Mr. Keane very well?

A. Yes.

Q. He was a director in the Lucky Friday, not the Extension, but the Lucky Friday, was he?

A. He was at that time. He's not now.

Q. Judge Featherstone was?

A. That's right.

Q. And you were?

A. That's right, and the other one was W. J. Emacio.

Q. Was Mr. Keane an officer at that time?

A. No, never was.

Q. He was a director, however?

A. He was a director, but he hadn't attended a meeting for four or five years.

Q. Sir? [231]

A. He was a director, but an inactive one.

Q. Well, he took part in the discussion of this contract, didn't he?

A. He did to some extent, yes. He wasn't in condition at that time to take any great part in it.

Q. By the way, you say they gave you the stock. Was that——

(Testimony of Charles E. Horning.)

The Court: Who are you referring to, the individual who was not in a condition?

A. Oh, Mr. Keane.

Q. You said you had some stock in the Lucky Friday Extension which I believe you stated in your testimony they gave you?

A. Mr. Sekulic gave it to me.

Q. Mr. Sekulic did, that's right?

A. That's right. He and I have been associated for years in one thing and another, and—I don't know whether you want me to go into that. He considered that property that he owned out to the west of there partly mine.

Q. Do you know how much of the stock Mr. Sekulic got? A. No, I don't.

Q. Do you know how much stock Mr. Grismer got?

A. I wouldn't have any way of knowing. If I may go back, now, so that——

Mr. Emigh: There's no question before the court now.

A. I mean in further answer to the one you just asked me. [232]

Mr. Emigh: We object to the witness testifying further without a question. He's an attorney.

Mr. Erickson: He states it's a further answer. I suggest he should be permitted to supplement it.

The Court: Well, I'm not too sure Mr. Emigh had any right to ask the question.

(Testimony of Charles E. Horning.)

Mr. Emigh: I'm objecting to Mr. Horning continuing his lecture.

The Court: Since you asked, I'll let him answer. You may answer.

Mr. Emigh: Let's find out what the question was.

The Court: What was the question you'd like to explain?

A. He asked me if I knew how much stock Mr. Sekulic got. Now, I don't want to leave an incomplete answer here.

The Court: Well, does it make any difference in this case?

Mr. Erickson: No.

Mr. Emigh: It might.

The Court: Well, then I'll permit him to answer.

Mr. Emigh: Well, he said he didn't know, I believe, and then went on into this dissertation.

The Court: Well, he may finish his explanation.

Mr. Emigh: Exception.

The Court: Now you may say what you'd like to say. [233]

A. While I would have no way of knowing how much stock he got, again——

Mr. Emigh: Now, just a minute. You answered the question. If you don't know, you don't know.

The Court: All right, sufficient. I'm allowing it to be sufficient because I'm not able to see, counsel, where your question as to the stock in any wise is

(Testimony of Charles E. Horning.)

cross-examination on the matters that were inquired into by the government of this witness. [234]

* * *

Redirect Examination

By Mr. Erickson:

Q. Mr. Horning, was there anything said by Mr. Allen to you about surveying the property, that you can recall? A. Yes, that they——

Q. What was that?

A. That they were to have it surveyed; by “they” I mean the Lucky Friday Extension crowd, and they did.

Q. Who did Mr. Allen say would do the surveying?

A. My recollection that he told me, he told us, I will say, that Arthur Lakes would do the surveying.

Mr. Erickson: That’s all.

Recross-Examination

By Mr. Emigh:

Q. Is that a clear recollection you have, Mr. Horning, or your best impression? [236]

A. Quite clear.

Q. Quite clear? A. Very clear.

Q. Do you remember the date of that discussion?

A. Of that conversation?

Q. Yes.

A. No. Sometime within that period when the discussions were going on.

Q. Sometime between May and October?

(Testimony of Charles E. Horning.)

A. Oh, no. No. Those claims were, I think two or three of them were located—here, I'll tell you a date; three of their claims were located on May 26, 1945; five of them on June 4, 1945. Now, the discussion of the survey was shortly before that.

Q. Before that?

A. Because the claims were located only after the surveying had been done.

Q. Mr. Horning, you know Mr. Sekulic?

A. Yes.

Q. And Mr. Grismer? A. That's right.

Q. Isn't it true that you and Mr. Sekulic had Mr. Grismer locate some claims out there?

A. You mean in this group?

Q. Huh? [237]

A. In this particular Extension group?

Q. At that time. A. No.

Q. Or near that time? A. No.

Q. To be transferred to the Lucky Friday?

A. No.

Q. That's not true?

A. I don't think Mr. Grismer would know how to locate one, in the first place——

Mr. Emigh: Well, now, we'll object to counsel, who is an eminent lawyer, making speeches after he's answered the questions.

The Court: All right. Anything further?

Mr. Emigh: No, your Honor.

Mr. Erickson: No.

(Whereupon, there being no further questions, the witness was excused.)

The Court: It is 4:30. Now, ladies and gentlemen of the jury, from time to time the court will make certain rulings, and from time to time counsel on one side or the other will make objections. Counsel in this case, the same as in every case, has the right to make objections. As a matter of fact, there's the duty on counsel to make an objection when they feel that their client's interests [238] require it. Some of the objections I will sustain; some of them I will think should be overruled. From time to time the jury may think that I think certain things as to the weight to be given to the testimony of certain witnesses. In the first place, the jury is very apt to be mistaken in thinking what I think. In the second place, even if the jury by coincidence might correctly guess as to what I think, this is to let the jury know that the jury in no wise is bound or controlled by what I think or by what the jury thinks I think as to the weight of the testimony of any witness.

It's the jury that determines how much credibility they should give to the testimony of each and every witness; it's for the jury to determine how much or how little weight they should give to each and every witness respectively. The jury is not bound or controlled at all by what the judge thinks or by what the jury thinks the judge thinks, and in this case from time to time there will be rulings which are necessary for me to make. It

will be your duty to only be guided by and interested in such testimony as the Court permits to be heard, and after you hear that testimony you're the ones who decide how much or how little such testimony impresses you. Good night. See you tomorrow morning at 10 o'clock. Court is adjourned until tomorrow morning at 10 o'clock. The jury [239] remembers the usual admonition.

(Whereupon, at 4:35 o'clock p.m., the Court took a recess in this cause until Wednesday, June 8, 1949, at 10 o'clock a.m.)

(Spokane, Washington, Wednesday, June 8, 1949, 10 o'clock a.m. Third day of trial.)

(All parties present as before, and the trial was resumed.)

JAMES E. GYDE

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Erickson:

Q. Will you state your name, please?

A. James E. Gyde.

Q. And your business?

A. I'm a lawyer.

Q. Where do you practice law, Mr. Gyde?

A. In Wallace, Idaho.

Q. And directing—well, first, how long have you practiced law in Wallace, Idaho?

A. About twenty years.

(Testimony of James E. Gyde.)

Q. And directing your attention to the Pilot Silver Lead Mines, are you acquainted with the Pilot Silver Lead Mines? A. I am.

Q. And what briefly is your acquaintance and was your acquaintance [240] with the Pilot Silver Lead Mines?

A. Well, I was employed by Mr. Keane, I believe, in the fall of 1945 to do work for the Pilot Silver—legal work for the Pilot Silver Lead Mines.

Q. And what legal work were you to do for the Pilot Silver Lead Mines?

A. I was to check over the articles of incorporation, the by-laws, and look over the titles to the properties, and check the minutes, and see that the records were properly kept.

Q. And did you do any legal work for the state of Idaho, to qualify the company in the State of Idaho?

A. No, I did not do that, but I checked the articles of incorporation after they came back from the state of Idaho.

Q. And what was your compensation, Mr. Gyde?

A. My compensation at the time I was employed by Mr. Keane, you mean?

Q. Yes.

A. Well, no compensation was set at that time.

Q. And when was your compensation set?

A. That was about I would say in the middle of April, 1946.

Q. And who fixed your compensation?

(Testimony of James E. Gyde.)

A. Well, Mr. Keane and Mr. Allen came into my office and told me that they were going to issue me 150,000 shares of the stock of the Pilot Silver Lead Mines, but that I was to [241] have 25,000 shares of stock for my fee; the balance of the stock was to be returned to Mr. Keane, and Mr. Keane was to use this stock to pay off other persons who had helped with the organization of the Pilot Silver.

Q. Did you agree to those terms as laid down by Mr. Keane?

A. I agreed to them. I asked them if that was a proper procedure, and they assured me that it was a proper procedure, and that it was commonly done, and that it was all right, and then I agreed to it.

Q. Was the defendant Allen there during those conversations?

A. Mr. Allen was there during those conversations.

Q. Did you have any other conversations with the defendant Allen about this?

A. Oh, I saw the defendant Allen numerous times; he had an office right across from mine, and general conversations with him, more social conversations than business conversations.

Q. Was that the only conversation that you can recall in regard to the business of the Pilot?

A. That's the only one.

Q. Did you receive any cash payments in addition to your stock?

(Testimony of James E. Gyde.)

A. No. Just a moment; on that last question I don't know whether I just understood what you meant, did I receive any cash payments. [242]

Q. Well, did you or did you not, as compensation in addition to your stock, or did you just receive your stock?

A. Oh, I received compensation for the—my stock was sold, and I received the cash in lieu of it.

Q. Yes, but you did not receive any cash in addition to your stock? A. No.

(Whereupon, two checks to Gyde from Keane were marked Plaintiff's Exhibit No. 30 for identification.)

(Whereupon, check Gibson to Gyde 5/21/46 was marked Plaintiff's Exhibit No. 31 for identification.)

(Whereupon, check Gibson to Gyde 5/23/46 was marked Plaintiff's Exhibit No. 31-a for identification.)

Q. Now, Mr. Gyde, the 25,000 shares of Pilot Silver Lead stock which you received, did you sell that at a subsequent time?

A. I did. I didn't receive—actually, to receive a certificate for 25,000 shares, I did not receive, but I received the cash in lieu of it.

Q. I'll hand you Plaintiff's identification 30, consisting of two checks, and ask you if that represents the compensation?

A. The check on top dated May 22, 1946, is made

(Testimony of James E. Gyde.)

to my order and was paid to me by Mr. F. C. Keane for 10,000 of my [243] 25,000 shares of stock. The check dated May 27 for \$1500.00 was also made by F. C. Keane and was in payment of the balance of my 25,000 shares of stock.

Mr. Erickson: I will offer 30.

Mr. Etter: Your Honor, I'm going to object to the admission of this exhibit at this time as being incompetent, irrelevant and immaterial, and indicating no material factor that brings it within the purview of any of the charges of the indictment as it now refers to the defendant James A. Allen, no proper foundation has been laid to associate the defendant Allen in any way with the checks, upon their face they had nothing to do with the defendant Allen, and there is no connection shown by the witness' testimony at this time to in any way prove any count against the defendant Allen as charged in the indictment.

The Court: Let me see the checks. Ruling reserved as to Exhibit 30.

Mr. Erickson: Has the Court seen the checks?

The Court: I've seen the checks, yes.

Mr. Erickson: Oh, ruling reserved, pardon me.

Q. (By Mr. Erickson): Mr. Gyde, I'll hand you Plaintiff's identification 31-a and ask you to state what that is?

A. The first check here is a check dated May 23, 1946, to James Gyde for \$4500.00, issued by the

(Testimony of James E. Gyde.)

E. J. Gibson and Company, and that check was handed to me by——[244]

Mr. Etter: Just a minute; I'm going to object to any further testimony. The exhibit has been merely identified.

Mr. Erickson: I think he's just describing the exhibit.

Mr. Etter: Well, he's described it already.

The Court: He has described it. If you have another question to ask, you may put it, and if there's an objection I will rule.

Q. (By Mr. Erickson): Did you endorse this exhibit or identification?

A. I did endorse the exhibit.

Q. At the same time—what time did you endorse it with reference to the time it was given to you?

A. Oh, within a few minutes thereof.

Q. I will hand you plaintiff's identification 31, and ask you to state what that is?

A. That's a check made to me, James E. Gyde, in the sum of \$10,000, issued by the E. J. Gibson and Company.

Q. After you received that check what did you do with it?

A. I endorsed the check.

Q. Did you give it to anyone after you endorsed it?

A. I gave the checks to Mr. Keane, both of them.

Q. At the same time?

A. No, one came different dates, I think you'll notice there. [245]

(Testimony of James E. Gyde.)

Q. Yes.

A. The second check was dated May 21.

Q. Who requested that you give these checks to Mr. Keane?

A. Oh, Mr. Keane. He brought them to my office.

Mr. Erickson: I'll offer 31 and 31-a.

Mr. Etter: I'll object at this time to the admission of these exhibits on the ground that they're incompetent, irrelevant and immaterial, do not show in any way that the defendant Allen is privy to any of the transactions arising as evidenced by the checks, there is no connection between the checks and any count or charge as alleged and laid in the indictment against the defendant Allen.

The Court: Ruling reserved.

Q. (By Mr. Erickson): Mr. Gyde, were the two checks which were endorsed, 31 and 31-a, what were those checks for?

A. Those checks were for the payment of 145,000 shares of the Pilot stock that was issued in my name.

Mr. Erickson: That's all, you may examine.

Mr. Etter: No cross-examination.

(Whereupon, there being no further questions, the witness was excused.)

EMELINE A. PHELAN

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

(Testimony of Emeline A. Phelan.)

Direct Examination

By Mr. Erickson: [246]

Q. Will you state your name, please?

A. Pardon?

Q. What is your name?

A. Emeline A. Phelan.

Q. And where do you reside, Mrs. Phelan?

A. Osborn, Idaho.

Q. And are you a widow woman?

A. Yes.

Q. And what was your husband's name?

A. George Brewer Phelan.

Q. And he's been deceased for several years?

A. Since '44.

Q. Now, Mrs. Phelan, was your husband the owner of any mining claims in the vicinity of Mullan, Idaho?

A. Must have been.

Q. Well, was he, to your knowledge?

A. To my knowledge, yes.

Q. And did you have his estate probated in the probate courts——

A. Yes, sir.

Q. ——of Idaho?

A. Yes, sir.

Q. And was the mining claims set over to you——

A. Yes, sir.

Q. ——set aside to you as your property after his death——

A. Yes, sir. [247]

Q. ——in the course of probate proceedings?

A. Yes, sir.

Q. And what were the names of those mining claims?

(Testimony of Emeline A. Phelan.)

A. The Dayton, the Miami, and the Akron.

The Court: What was the last one?

A. Akron.

Q. Well, Mrs. Phelan, were you approached or interviewed by anyone with reference to the formation of a new mining company and the procuring of these claims?

A. Well, naturally I was approached by Mr. Grismer.

Q. You were approached first by Mr. Grismer?

A. Yes, I was.

Q. And did you know Mr. Grismer before?

A. My husband had known him for several years, fifteen, I suppose, and I had known him as to meet him.

Q. When you talked to Mr. Grismer did you talk to anyone after you talked to Mr. Grismer, about these same claims? A. Yes, sir.

Q. Who did you talk to afterwards?

A. He brought a gentleman there and introduced him as Mr. Allen.

Q. Is it the same defendant as the defendant in this case, sitting at this table?

A. Well, since I didn't know Mr. Allen before, and have never seen him since, I couldn't say. He was dressed altogether [248] differently, of course.

Q. Yes, and was Mr. Grismer there when Mr. Allen was there?

A. Yes, sir, he brought him.

Q. And was this at your house?

(Testimony of Emeline A. Phelan.)

A. Yes, sir.

Q. At Osborn, Idaho? A. Yes, sir.

Q. Osborn is just a short distance from Wallace? A. About six miles, I suppose.

Q. And did you have a conversation there with Mr. Allen and Mr. Grismer? A. Yes, sir.

Q. And what was the substance of that conversation?

A. Well, I have a poor memory to begin with, and it was several years ago, but it was simply that they knew of these claims, and was thinking of taking up land or something to that effect in that section, and would I be interested in either selling them or letting them go for stock.

Q. And what did you say to that?

A. Well, naturally, since I knew assessment work was soon coming up, and knowing the difficulties of assessment work, especially for a widow, I said yes.

Q. And what terms were agreed upon then, Mrs. Phelan?

A. They offered me \$600.00 in cash and 20,000 shares of stock.

Q. Did you agree to those terms? [249]

A. I did.

Q. Did you get the \$600.00 later?

A. Yes, sir.

(Whereupon, check Keane to Phelan, 2/13/46, was marked Plaintiff's Exhibit No. 32 for identification.)

(Testimony of Emeline A. Phelan.)

Q. I'll hand you Plaintiff's identification 32——

A. What is it?

Q. This is a check, Plaintiff's identification 32, and I'll ask you if that is the check that you received?

A. That's my endorsement.

Q. And does that check refresh your recollection as to what time this was?

A. Well, naturally, since the date's right on it, February 13, 1946.

Q. And was that, to the best of your recollection, when this deal was consummated?

A. I know it was in the spring; that's the only memory I have.

Mr. Erickson: I offer 32.

Mr. Etter: We have no objection.

The Court: Exhibit 32 is offered, no objection, it's admitted.

(Whereupon, Plaintiff's Exhibit No. 32 for identification was admitted in evidence.)

Q. (By Mr. Erickson): Mrs. Phelan, did you later go up to Mr. [250] Allen's office?

A. Yes, sir.

Q. And how many days later was that, or approximately?

A. That I couldn't say, but it would be I suppose three or four.

Q. And where was his office located?

A. It is named the Gyde-Taylor Building, I believe.

(Testimony of Emeline A. Phelan.)

Q. In Wallace, Idaho? A. Yes, sir.

The Court: In the what Taylor Building?

A. I believe it's the Gyde-Taylor Building. I'm not sure of the name of the building, but I believe that's it.

Q. Did you have a conversation, a discussion with Mr. Allen at that time when the deeds were arranged for?

A. Well, not too much of a—I mean not any length of time. I remember I was in a hurry to catch a train home.

Q. And who was present up there when you went in the office, to the best of your recollection?

A. There was Mr. Allen, Mr. Grismer, and I believe the secretary.

Q. Was there anything said by Mr. Allen about a new company, and if so, what was said?

A. I can't remember that.

Q. Well, what was the conversation up there? What was the purpose of your going up to the office? [251]

A. To get the stock.

Q. Did you get the stock?

A. Yes, sir, my certificate number 100; it was the first one issued.

Q. It was a stock certificate in the Pilot?

A. Yes, sir.

Q. For how many shares? A. 20,000.

Q. You still have your stock?

A. Yes, sir; I should have brought it, but I didn't. I forgot it.

(Testimony of Emeline A. Phelan.)

Q. Was Mr. Allen present when the stock was given to you in the building?

A. If I remember correctly, yes.

Mr. Erickson: That's all, you may examine.

Cross-Examination

By Mr. Etter:

Q. Mrs. Phelan, Mr. Grismer I think you said had known your husband for some time?

A. Yes.

Q. And isn't it true they had been acquainted through the mining business for a great number of years?

A. Yes, sir, but they had not worked together.

Q. That's correct, they had not worked together.

A. They just knew each other as neighbors and people in a small town. [252]

Q. Just as neighbors and local residents, as it were?

A. Yes.

Q. But you weren't too well acquainted with Mr. Grismer?

A. No; for instance, not well enough to have ever met the family; I just know Mr. Grismer as he came to see Mr. Phelan.

Q. Your husband was deceased when, Mrs. Phelan?

A. August, 1944.

Q. Do you recall, Mrs. Phelan, probably the first time that Mr. Grismer and you might have had a conversation with regard to the claims which you owned?

A. Well, it would be, it seems to me, the day before he and Mr. Allen came.

(Testimony of Emeline A. Phelan.)

Q. I see.

A. It was all close together, I know that.

Q. Mr. Grismer had had some conversations, of course, with your husband about those claims some time before?

A. Well, that could have been, but I wouldn't know that; I didn't know my husband's business.

Q. Did he ever discuss with you the——

A. Seldom. Anyone that's been a mining man's wife knows she doesn't try to keep up with her husband's talk.

Q. Too many of them?

A. Too many, yes.

Q. I'll ask you this: When Mr. Grismer first called on you [253] did he mention anything about any negotiations he'd had with Mr. Phelan prior to Mr. Phelan's death?

A. No, because I don't think he had had any, not in a business way.

Q. That you know of?

A. Not that I know of.

Q. And he came down to you and as you say, talked to you about these four claims that you had?

A. Yes.

Q. They were the Akron, the Cleveland——

A. No, the Dayton and the Miami. There is a claim called the Cleveland, but I believe it overlaps some way; it's not in the notice, I know.

Q. Now, Mr. Grismer had a conversation with you on that date about acquiring these claims from you?

A. Yes, he did.

(Testimony of Emeline A. Phelan.)

Q. And what did he say to you at that time, if you recall?

A. Well, he asked if Mr. Phelan still had those claims, as he understood he had, and I said as far as I knew, because Mr. Phelan had written me to always hold them.

Q. I see, so you told him you assumed they were all right? A. Yes.

Q. And then did he have some discussion with you about acquiring them from you?

A. Yes, and he asked me if I had any idea what they were [254] worth, and I told him no.

Q. Did you have any further conversation on that day with Mr. Grismer?

A. He remarked that he would bring a Mr. Allen, that knew more about those things than he did, and he would talk to me.

Q. And shortly thereafter Mr. Grismer and Mr. Allen came down to see you? A. Yes.

Q. Although I think you said your memory was a little indistinct?

A. Naturally; I don't suppose they'd know me here today if they hadn't seen me in the meantime, too.

Q. Mr. Allen had some conversation with you?

A. Yes.

Q. Were you out in the kitchen when you were talking?

A. No, we were in the living room.

Q. Isn't it true, Mrs. Phelan, and this is of

(Testimony of Emeline A. Phelan.)

course a matter of memory with you, isn't it true Mr. Allen talked with you about a central development program in that particular area in which the Pilot and the Lucky Friday and the Homestake and numerous other groups were located?

A. I remember he remarked it would be a nice piece of ground, all of it together.

Q. And he also said, did he not, Mrs. Phelan, that he was [255] with the Callahan Consolidated in the Gyde-Taylor Building?

A. I can't remember that.

Q. But you do recall that you went up to the office in the Gyde-Taylor Building?

A. Yes, but isn't that Mr. Grismer's office? I don't know.

Q. It was Mr. Grismer's office, wasn't it?

A. Naturally that's where he would be.

Q. Now, do you recall who drew the deed for the transfer of the property? A. No, I don't.

Q. If you recollect, don't you remember that the deed was drawn in Mr. Keane's office in the same building?

A. Well, I know we went across to Mr. Keane's office.

Q. And do you remember that a deed was drawn there? A. Yes, and I signed it there.

Q. And do you recall who it was that drew that deed? A. No, I don't.

Q. You don't recall that? A. No.

Q. You went to Mr. Grismer's office in the Gyde-

(Testimony of Emeline A. Phelan.)

Taylor Building, and I think you said that Mr. Allen was present at that time? A. Yes.

Q. And during the conversation didn't it develop that Mr. Grismer had offered you I think it was originally \$300.00 [256] and 10,000 shares of stock?

A. Yes.

Q. And wasn't it true likewise that you then asked Mr. Allen if he thought that was a fair price, and he said he didn't think so, and if the property was worth anything it was worth double that, it would be worth \$600.00 and 20,000 shares in his opinion?

A. I can't remember Mr. Grismer's exact offer of stock, but I do know when Mr. Allen came he did make this final offer, and it was more than Mr. Grismer offered.

Q. And you likewise asked Mr. Grismer about the matter of title to your claims, didn't you, at that time? A. Yes.

Q. You had some question in your mind, did you not, about the title?

A. No, it wasn't that; it was just at that time they were not probated.

Q. That was right.

A. Mr. Phelan had written a deed, but of course he had made it out in Arizona, where he died.

Q. And do you recall that Mr. Grismer told you at the meeting that he would have Mr. Gyde look into that question?

A. Well, I can't exactly remember, but maybe he did.

(Testimony of Emeline A. Phelan.)

Q. And isn't it true also that Mr. Grismer in your company requested a lady by the name of Irene Vermillion to give [257] you the money and make out the stock to you?

A. I have an idea so, if she was the office girl, if she was his stenographer.

Q. Well, no, I want to ask you if the money and the stock wasn't given to you in Mr. Keane's office? A. The check was, I know.

Q. The check was?

A. But I'm not sure where the stock was handed to me, which office.

Q. It could be right, isn't that so?

A. Yes, it could be, but the check was handed to me in Mr. Keane's office.

Q. And it was made out by the stenographer who happened to be in Mr. Keane's office?

A. I think so, as far as my memory goes, but I can't swear to it.

Q. And as you recall, Mr. Grismer walked over with you and instructed her or requested her to do that? A. Yes.

Mr. Etter: That's all, Mrs. Phelan.

Mr. Erickson: That's all.

(Whereupon, there being no further questions, the witness was excused.) [258]

W. H. HERRICK

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Erickson:

Q. Will you state your name, please?

A. W. H. Herrick.

Q. And where do you reside, Mr. Herrick?

A. San Francisco, California.

Q. Before you resided in San Francisco, California, where did you reside?

A. Wallace, Idaho.

Q. And how long did you live in Wallace?

A. Oh, about thirty years—no, about forty years.

Q. What was your business in Wallace?

A. Mining, and I was county assessor for thirty-five years.

Q. Did you own some mining claims in the vicinity of Mullan, Idaho?

A. I had about a third interest in the Cincinnati group.

Q. What was the Cincinnati group?

A. What was it?

Q. Yes, just briefly, how many claims?

A. Five claims.

Q. And where were they located?

A. Just north of the Gold Hunter Mining Company, adjacent to the Independence and the Pilot Silver.

Q. Mr. Herrick, were you approached by anyone

(Testimony of W. H. Herrick.)

in connection [259] with the Pilot Silver Lead Mining Company about selling the Cincinnati claims? A. I was.

Q. Who contacted you?

A. Joseph Grismer.

Q. And do you recall about when that was?

A. Oh, somewhere along the latter part of 1945, I think, or early in 1946.

Q. And after you talked to Joe Grismer did you talk to others? A. Yes.

Q. Who did you talk to?

A. James A. Allen.

Q. When did you talk to James A. Allen?

A. Well, when we made the final deal for the property.

Q. And where was that deal made?

A. Made in the office of the Callahan Mining Company in Wallace.

Q. And about—well, just describe the meeting that you had in the office when this deal was discussed, who was present, and what was discussed?

A. Well, Mr. Allen informed me what his proposition was.

Q. What did he say?

A. Well, he said he would give us \$5,000.00 and 100,000 shares of Pilot Silver stock. [260]

Q. Of Pilot Silver stock? A. Yes.

Q. And did he say what company he was organizing?

A. Said they would leave it in the name of the

(Testimony of W. H. Herrick.)

Pilot Silver, and throw our claims in under that name.

Q. Who was present at that conversation?

A. When I went in the office Mrs. Phelan was in there, and I think she had completed her deal with Mr. Allen, and left.

Q. And you and Mr. Allen were there alone then?

A. My recollection; I don't remember anyone else being there.

Q. Did you receive your stock subsequently?

A. Oh, I think it was quite a while later.

(Whereupon, check Keane to Cincinnati Co., 5/1/46, was marked plaintiff's Exhibit No. 33 for identification.)

Q. I'll hand you Plaintiff's identification 33, and ask you what that is?

A. Well, it's either the check that I received from Mr. Keane for the \$5,000.00 for the company—oh, it must be; here's my endorsement on it.

Q. When was this received with reference to your conversation with Mr. Allen in the Callahan office?

A. I can't remember just how soon afterwards it was. It wasn't very long.

Q. Did Mr. Allen make any statements to you at that time [261] about the organization of the company, who was organizing it?

A. Not that I remember.

Mr. Erickson: I offer 33 in evidence.

(Testimony of W. H. Herrick.)

Mr. Etter: We'll object to the admission of this exhibit at this time as being incompetent, irrelevant and immaterial to prove any issue made by this case; it indicates it's a check from F. C. Keane; the last answer of the witness I think indicates the absence of privity with the defendant Allen so far in the testimony. Object to it further as incompetent, irrelevant and immaterial at this time.

The Court: Ruling reserved.

Mr. Erickson: That's all, you may examine.

Cross-Examination

By Mr. Etter:

Q. Mr. Herrick, you were a substantial owner, were you not, in what was known as the Cincinnati Mining Company?

A. About a third owner, yes.

Q. And the company owned a group of claims which were lying to the south and the west of the Pilot group, as you later understood the Pilot group to be? A. That is right.

Q. Now, when was the first time that Joe Grismer started to negotiate or discuss with you, Mr. Herrick, the matter of acquiring those claims which you had in the Cincinnati [262] group?

A. Oh, it's rather hard for me to say.

Q. I mean approximately.

A. Well, as I said before, it was either the latter part of '45 or early in '46.

Q. And did you and he have several discussions about the matter?

(Testimony of W. H. Herrick.)

A. Oh, yes, we'd meet on the street and talk about it.

Q. During that time you had no contact with Mr. Allen, isn't that so?

A. Not that I remember at all.

Q. You don't remember talking to him at all at that time?

A. I don't think so, not until after the final agreement.

Q. After the final agreement. Isn't it true, Mr. Herrick, that in March, in 1946, or in and about that time, that there were other people other than Mr. Grismer who were undertaking negotiations with you looking toward the acquisition of your claims? A. That is true.

Q. One man by the name of George Mortimer, isn't that true? A. That's the only one.

Q. And when did you first have any conversations with Mortimer?

A. I think that was in the spring of '46.

Q. The spring of '46; and when Mortimer talked with you he [263] had some purposes likewise, did he not, as to acquiring the interest or the claims that you had in the Cincinnati group?

A. Oh, yes.

Mr. Erickson: To which we object as going beyond the scope of the direct examination.

Mr. Etter: It's preliminary.

The Court: The question put has been answered. Counsel says it's preliminary. You may proceed.

(Testimony of W. H. Herrick.)

Q. (By Mr. Etter): After the discussions that you had looking toward the acquiring of your claims, I think you answered the District Attorney that you went to the Callahan office with Mr. Grismer?

A. With Mr. Grismer?

Q. With him? A. No.

Q. Did he ask you to come there, is that it?

A. Well, somebody, I think probably Joe, I'm not sure, but anyway, I was asked to be there at that time.

Q. That was about what date, approximately, now?

A. Well, it was probably in April of '46.

Q. And didn't they say there, or didn't Joe tell you, or somebody tell you just before you came up there that the Callahan office was about the only office that had a complete map of all the claims that were involved in this [264] particular group? Did anyone say that to you?

A. Oh, I've looked over so many maps up there I wouldn't recall. Wait a minute; I had a number of talks with Joe Grismer and we looked over the maps and discussed the advisability of developing.

Q. That is, were all these preliminary conversations during the latter part of 1945, the early part of 1946? A. That is right.

Q. And while you were likewise discussing the other proposition with this man Mortimer?

A. Yes, that's true.

Q. Now, when you came up to the Callahan office you met Mr. Allen, isn't that correct?

(Testimony of W. H. Herrick.)

A. I did.

Q. Now, did Mr. Allen tell you at that time that he was working on what he called a Central Development Plan; I'll add a little further to that, using the Gold Hunter as the axis of the operation, so-called?

A. That was one of the propositions discussed, yes.

Q. Yes, and isn't it true that Mr. Allen told you at that time that he was negotiating in Chicago with the owners of the Gold Hunter mining property looking toward a central development having its axis in the Gold Hunter property?

A. I won't say just when he said it, but such a conversation took place, yes. [265]

Q. Such a conversation took place?

A. Yes.

Q. And didn't Mr. Allen likewise tell you, Mr. Herrick, during this conversation, possibly not the first one, but as you say, subsequent, that his plan of consolidation on this central development, if he was able to acquire the Gold Hunter, would include the Lucky Friday, the Lucky Friday Extension, the Hunter Creek, the Idaho Silver, the Pilot, the Cincinnati, and maybe the Homestake and one or two others which were all in that section of the plan, in that district of Idaho?

A. They're all adjacent, and all subject to the same development, except some of them were a little bit low without a shaft.

(Testimony of W. H. Herrick.)

Q. That is, through partial development in some and none in others, isn't that true? A. Yes.

Q. And Mr. Allen discussed that, didn't he?

A. Discussed it?

Q. I mean, he told you he was working on such a plan? A. Oh, he did, yes.

Q. And isn't it true it was indicated to you by Mr. Allen or Mr. Grismer, I don't know which one, that if such a development program got under way and Pilot was in the development program and acquired your claims, that it [266] would greatly enhance the value of your claims to have them operated through the central development of all the claims?

A. That's the only way our claims could be developed.

Q. And you were told at that time that that was the proposal being made to you, and Mr. Allen was working on it, and he advised you that would add greatly to the value of your claims, and you believed it?

A. Well, I knew just as much as Mr. Allen did about the claims.

Q. And you agreed with him, isn't that so?

A. Well, as it was the only way to develop these claims, why, naturally.

Q. Now, didn't he at the time when he was talking about the central development program, didn't he explain during one of these conversations a proposed cross-cut which he was going to run through

(Testimony of W. H. Herrick.)

part of the property from the Gold Hunter shaft or tunnel?

A. Well, that was the natural development for the Cincinnati—Pilot Silver.

Q. The Gold Hunter has a long tunnel——

Mr. Erickson: To which we object as not responsive; the witness was asked Allen's conversation; he gives his own conclusions.

The Court: Stricken. [267]

Q. (By Mr. Etter): The Gold Hunter physical set-up at the present time, and at the time you were discussing these claims, isn't there a long tunnel that goes into the Gold Hunter property, through the Gold Hunter property, by which the surrounding country can be worked by cross cuts from the main tunnel?

A. If the surrounding country is higher than that tunnel level, yes.

Q. It was a practical way to develop it, wasn't it, and didn't Mr. Allen explain a proposed cross cut from the shaft or from the Gold Hunter, and in the event that was impractical, explain a proposed cross cut from the Lucky Friday shaft in the event the Gold Hunter couldn't be purchased; wasn't there some discussion about that?

A. I heard that discussed.

Q. And as a matter of fact, all of these things were discussed after you came up to the office with Mr. Grismer?

A. I think they were, pretty nearly all of them were after that.

(Testimony of W. H. Herrick.)

Mr. Erickson: Were after?

A. After, yes.

Q. And they were after the discussions you had had with Mr. Grismer?

A. Well, Mr. Grismer and I had pretty near all the discussions to start with. [268]

Q. Mr. Allen didn't come down and approach you, did he, Mr. Herrick?

A. Not that I recall.

Q. Mr. Grismer took you up to the Callahan?

A. He didn't take me up.

Q. I mean, you went up and there's where you discussed this with Mr. Allen? A. Yes.

Q. Mr. Allen didn't pay you any money?

A. Didn't pay any money?

Q. He didn't pay you any?

A. Mr. Keane paid the money.

Q. Now, as a matter of fact, when you were discussing this matter of the sale of your claims in the office, Mr. Keane was present, wasn't he, numerous times?

A. Well, which time do you mean?

Q. Well, the time that the transaction was finally finished?

A. No, not to my recollection he wasn't. I went to Mr. Keane's office from the Callahan office.

Q. And did you talk with Mr. Keane there?

A. Yes, and he drew up papers.

Q. He drew the papers? A. Yes.

(Testimony of W. H. Herrick.)

Q. And you transferred your property and received a check from Mr. Keane? [269]

A. Well, he drew up the agreement for the stockholders of the Cincinnati Mining Company to sign. I took that agreement and had a stockholders' meeting and we adopted it.

Q. And then you gave it to Mr. Keane?

A. Gave that agreement?

Q. Yes. A. Yes, it was in duplicate.

Q. And you received from him then \$5,000.00, isn't that so? A. Correct.

Mr. Etter: That's all, Mr. Herrick.

Redirect Examination

By Mr. Erickson:

Q. Mr. Herrick, were the discussions relative to the Central Development plan after you made your deal, or before?

A. I think it was after, Mr. Erickson. I don't remember, it might have been at the time, but I don't think that Mr. Allen and I discussed the development before the final agreement was signed and the property turned over.

Q. When you went into Mr. Keane's office were any of the details of the agreement discussed with Mr. Keane, or had they all been discussed previously with Mr. Allen?

A. That I can't say. I don't believe that I had to discuss those things with Mr. Keane at all.

Mr. Erickson: That's all.

(Whereupon, there being no further questions, the [270] witness was excused.)

LEO G. KRAEMER

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Stocking:

Q. Will you state your name, please?

A. Leo G. Kraemer.

Q. And where do you reside?

A. Wallace, Idaho.

Q. What is your position there, Mr. Kraemer?

A. Pro manager of the Idaho First National Bank of Wallace.

Q. And how long have you been with the Idaho First National Bank? A. About twelve years.

Q. As pro manager? A. No.

Q. And how long as pro manager?

A. Oh, I'd say for the last seven or eight years.

Q. What does the title "pro manager" mean?

A. What it is, is that the board of directors of the bank——

Q. Speak up.

A. It's official authorization from the board of directors for me to transact business for the bank.

Q. And who is the manager of that bank?

A. Mr. O. L. Jones.

Q. In response to the subpoena duces tecum you brought with [271] you, did you not, certain records of your bank? A. That's right.

(Testimony of Leo G. Kraemer.)

Q. And these are the records which I'm holding in my hand? A. That's right.

(Whereupon, deposit slip 8/7/45, Delaware Mines, was marked Plaintiff's Exhibit No. 34 for identification.)

(Whereupon, deposit slip 8/7/45, Montana Leasing, was marked Plaintiff's Exhibit No. 35 for identification.)

(Whereupon, deposit slip 5/22/46, F. C. Keane, was marked Plaintiff's Exhibit No. 36 for identification.)

Q. Handing you exhibits 34, 35 and 36 for identification, will you tell me if those are the permanent records of your bank?

A. These are the permanent records of the bank.

Q. And can you identify Plaintiff's Exhibit 34?

A. It's a deposit slip made out to the Delaware Mines Corporation, dated August 7, 1945.

The Court: Deposit slip?

A. Deposit slip.

The Court: Dated what date?

A. August 7, 1945.

Q. And will you identify exhibit 35, please?

A. And this is a deposit slip made out to the Montana Leasing [272] Company, dated August 7, 1945.

Q. And identify 36 for identification, please.

A. A deposit slip made out to F. C. Keane dated May 22, 1946.

(Testimony of Leo G. Kraemer.)

Mr. Stocking: We'll offer these in evidence, please.

Mr. Etter: We'll object to these exhibits, your Honor, that it isn't conceivable that there is any connection between the exhibits and the defendant Allen, don't indicate there's anything privy between the exhibits and the defendant Allen, incompetent, irrelevant and immaterial at this time, there's no proper foundation laid between these exhibits and the allegations of the indictment pertaining to the defendant Allen.

The Court: Let me see them. Well, counsel, I can see no materiality in these now.

Mr. Stocking: We'll have to connect them up, of course.

The Court: Well, then, I'll reject them. If they need to be connected up they shouldn't be offered.

Mr. Stocking: Well, the materiality of these is as to the dates, and checks were written on those dates to those particular companies.

The Court: Well, at the present time I know of no reason they should be admitted, and exhibits 34, 35 and 36 will be rejected upon the defendant's objection. [273]

(Whereupon, deposit slip 5/22/46, Pilot Company, was marked Plaintiff's Exhibit No. 37 for identification.)

(Whereupon, deposit slip 5/22/46, Coeur d'Alene Consolidated, was marked Plaintiff's Exhibit No. 38 for identification.)

(Testimony of Leo G. Kraemer.)

Q. I've taken from your file number 2 two exhibits which I have had marked plaintiff's 37 and 38 for identification. Are those the permanent records of your bank? A. They are.

Q. And can you identify Plaintiff's 37?

A. A deposit slip made out to the Pilot Silver Lead Company dated May 22, 1946.

Q. And 38, can you identify that for me, please?

A. It's a deposit slip made to the Coeur d'Alene Consolidated Lead and Silver Mines, Inc., dated May 22, 1946.

Q. Now, I will show you what has been marked Plaintiff's 13 for identification, and Plaintiff's 31, which has been received in evidence, and ask you if those two exhibits——

The Court: Let's see, exhibit 13 for identification——

Mr. Stocking: And Exhibit 31, which has been received in evidence.

The Court: Exhibit 31 has been admitted?

Mr. Stocking: Yes.

The Court: All right.

Q. And ask you——[274]

The Clerk: Aren't you mistaken about that, Mr. Stocking? 32 has been admitted, but not 31.

Mr. Stocking: Well, correct that, then.

The Clerk: 31 is for identification.

Mr. Etter: And is 13 likewise an identification, too?

Mr. Stocking: Yes.

(Testimony of Leo G. Kraemer.)

Q. (By Mr. Stocking): ——and ask you if you can identify those two exhibits in connection with any transactions with your bank?

A. Do you want them separately?

Q. Yes.

A. Exhibit 13 looks like it was cleared through the Idaho First National Bank on May 22, 1946, and shows our endorsement stamp, and Exhibit 31 cleared through our bank on May 22, 1946, and our endorsement stamp is on the back of the check.

Q. Now, with relation to these exhibits——

The Court: Counsel, it's now 11 o'clock. Is there any reason why we shouldn't have our morning recess?

Mr. Stocking: No reason at all.

The Court: All right, there will be a recess for ten minutes.

(Whereupon, the following proceedings were had without the presence of the jury and two alternate jurors.) [275]

The Court: Gentlemen, I am conscious of the fact that a great many exhibits have been offered. A few have been admitted. I might say a very few have been admitted. A large number of them have been made subject to reservation of ruling. A few have been rejected upon the state of the record when offered, but among those concerning which there has been a reservation of ruling are what I imagine would be a number of hundred exhibits.

(Testimony of Leo G. Kraemer.)

I've forgotten the identification of one container which had exhibits A to O therein——

The Clerk: That's identification 8.

The Court: ——but undoubtedly many hundred exhibits. Theoretically it would appear that only 40 exhibits have been offered, but I imagine that in those 40 there are several thousand. Ordinarily I hesitate very much about admitting exhibits that I don't know what they show. You can recognize the great difficulty of my knowing what each of these separate sheets show which have been lumped together as exhibit 8, for instance. Now, if I haven't time to know what these exhibits show, how much help are they going to be to the jury?

Mr. Stocking: It's our position, if the Court please, that we need these as foundation evidence for our accountants' summaries to be presented.

The Court: I don't know whether you do or not. If [276] somebody says he went through the records of a company and he found such and such, why do you have to put all the records in? Suppose he said he read the Encyclopedia Britannica; does he have to put the encyclopedia in evidence?

Mr. Stocking: No, but in order to trace down your stock certificates and show who got the benefit of certain stock issued as promotion stock, it's going to be necessary to have the stock stubs, the cancelled certificates, testimony from the brokers——

The Court: I'm not so much concerned about the stock; I recognize there's some possibility of some

(Testimony of Leo G. Kraemer.)

certificates having some relationship to the issue. I suspect that a great many of those certificates are just chaff.

Mr. Stocking: Well, we intended to sort out the ones that were specifically needed, and have those separated from the rest of the corporation records.

The Court: Are the certificates bound together in one exhibit?

Mr. Stocking: Mr. Denney is doing that now with the Extension exhibits. They have been marked for identification, yes.

The Court: What number?

Mr. Stocking: 29. [277]

The Court: Well, rather than confront me with exhibit 29 and offer it in evidence, why should they not be separated and you offer the exhibits——

Mr. Stocking: I don't believe I offered that exhibit, if the court please; I had it identified.

The Court: Well, why identify an exhibit?

Mr. Stocking: Well, those are the corporation records.

The Court: But certainly as to Exhibit 8 a large share of those checks have no casual connection with this transaction except from the standpoint of addition.

Mr. Stocking: After your statement yesterday Mr. Erickson and I conferred, and I think our position on Exhibit 8 is in accord with your position.

The Court: I'm not saying that if the defendant wants the exhibits in, all of them, that the Court

(Testimony of Leo G. Kraemer.)

would refuse, but it's my general theory that if you throw so many papers at me that I can't understand what they are, that at least some of the twelve jurors might not understand any better than I do, so you know what I'm thinking, and that is, so far as you can, streamline your identification of exhibits to something that I can understand.

Mr. Stocking: I think outside of the brokers' records that most of the exhibits will have been identified after the next two witnesses, two or three witnesses. [278]

The Court: All right, gentlemen. Thank you.

(Short recess.)

(Whereupon, the following proceedings were had within the presence of the jury and two alternate jurors.)

Direct Examination

(Continued)

By Mr. Stocking:

Q. Mr. Kraemer, with relation to these exhibits 31 and 13 which you have identified as having cleared through your bank on May 22, 1946, what can you say as to any transaction which took place at your bank on that day?

A. It seems exhibit 13, which is the \$40,000 check payable to the Pilot Silver——

The Court: What check is that?

A. Exhibit 13.

The Court: Identification.

(Testimony of Leo G. Kraemer.)

A. —to the Pilot Silver Lead Company for \$40,000, was deposited to the Pilot Silver Lead Company on Exhibit 37 here.

Q. Was the entire amount deposited?

A. No; \$20,000 of it was deposited to Coeur d'Alene Consolidated Lead Mines; and of the \$10,000 check which is number 31, payable to James E. Gyde and endorsed by him, was deposited by the deposit slip, \$10,000, to F. C. Keane—

Q. On what exhibit?

A. On exhibit 36, and \$5,000 of which went with the \$20,000 [279] to make up a \$25,000 deposit to the Coeur d'Alene Consolidated Lead Mines, Inc., Exhibit number 38.

The Court: \$5,000 went to Coeur d'Alene to make up what exhibit?

A. Number 38.

The Court: All right.

(Whereupon, escrow agreement and cashier's check, 5/23/46, were marked Plaintiff's Exhibit No. 39 for identification.)

Q. I have taken from your file number 4 an exhibit consisting of two documents attached together which has been marked for identification Plaintiff's exhibit number 39, and I will ask you if you can identify that, please?

A. This is an escrow agreement between the Coeur d'Alene Mines Corporation and the Coeur d'Alene Consolidated Silver Lead Mines, Inc.

(Testimony of Leo G. Kraemer.)

The Court: Between the Coeur d'Alene Silver Mines?

A. No, between the Coeur d'Alene Mines Corporation——

The Court: And what was the other?

A. ——and the Coeur d'Alene Consolidated Silver Lead Mines, Inc.

Q. And can you identify the signature of the president of the Coeur d'Alene Consolidated Silver Lead Mines, Inc.?

A. The signature is J. A. Allen.

Q. And there is also with this agreement a check which is attached that you have not yet identified.

A. It's a cashier's check dated May 23, 1946, for \$25,000 payable to the Coeur d'Alene Mines Corporation.

Q. Now, with respect to exhibits 37, 38 and 36 for identification, in whose handwriting do they appear?

A. They're my handwriting.

Q. And did you make the notation which appears on exhibit 38?

A. Yes, that's my handwriting too.

Q. And that is the Coeur d'Alene Consolidated deposit slip? A. That's right.

Q. And does that notation make reference to this cashier's check and agreement? A. Yes.

Q. With whom was your transaction on May 22 or May 23, whenever these transactions took place at the bank? A. Mr. Keane.

(Testimony of Leo G. Kraemer.)

Q. And did he bring in these two checks, exhibit 13 and exhibit 31, totalling \$50,000? A. Yes.

Q. And the deposit ended with \$20,000 in Pilot Silver Lead, \$25,000 in the Coeur d'Alene Consolidated for the purchase of the cashier's check, and \$5,000 in Mr. Keane's personal account, is that correct? A. That's correct.

Q. I'll withhold the offer, then, of those exhibits at the present time. Now, I have taken from your bank file number [281] 6 a document which will be marked for identification Plaintiff's exhibit number 40.

(Whereupon, bank ledger of Delaware Mines Corporation was marked Plaintiff's Exhibit No. 40 for identification.)

Q. I'll ask you if you can identify that?

A. This is an original ledger sheet of the Delaware Mines Corporation.

Q. And what does the ledger sheet show as to who has authority to sign checks on that?

A. J. A. Allen or F. C. Keane or William Mullen.

Q. Now, referring to an item on this bank ledger sheet of August 7, 1945, and also referring to Plaintiff's Exhibit 6-a, which has been received in evidence, it being a \$10,000 check payable to Delaware Mines Corporation dated August 7, 1945, check number 8 of Lucky Friday Extension Mining Company, can you identify the deposit of that check on the bank ledger?

(Testimony of Leo G. Kraemer.)

A. Yes. The bank ledger shows a deposit of August 7 of \$10,000, and this check shows it cleared our bank on August 7.

Q. And there was no other item on that day of that amount? A. Not that amount.

The Court: What date was this deposited?

A. August 7, 1945. [282]

Q. What does the bank balance show previous to this deposit? A. \$20.83.

Q. As of what date?

A. As of June 23, 1945.

Q. And the next transaction was——

The Court: How much, twenty dollars?

A. \$20.83.

Q. And the next transaction was the deposit of this \$10,000 check on August 7, 1945?

A. That's right.

Q. And then checks in what amount are shown as drawn on that account on that date?

A. It shows one check for \$3,000.

Q. And how about the date following?

A. On August 8 it shows two checks, one for \$6,000 and one for \$1,000.

Q. And then what does the bank balance show at the end of those transactions, and on what date?

A. On August 8, 1945, it shows \$20.83.

Q. So that the same amount appears there immediately after the \$10,000 deposit, after one day's transactions? A. That's right.

(Testimony of Leo G. Kraemer.)

(Whereupon, Delaware check 8/7/45 was marked Plaintiff's Exhibit No. 41 for identification.)

(Whereupon, Delaware check 8/7/45 [283] was marked Plaintiff's Exhibit 41-a for identification.)

(Whereupon, Delaware check 8/7/45 was marked Plaintiff's Exhibit 41-b for identification.)

Q. Will you examine those exhibits, please, and identify them with reference to any transactions with your bank?

A. I have three checks here, one for \$3,000, one for \$6,000, one for \$1,000, drawn by the Delaware Mines Corporation, that show our bank cancellation of August 7 on the \$3,000, August 8, 1945, on the \$6,000 and \$1,000.

Q. And the \$3,000 is exhibit 41-b, the \$6,000 is marked Exhibit 41-a, and the \$1,000 marked Exhibit 41, all for identification, is that correct?

A. That's right.

Q. Now, can you identify these as being the \$3,000, \$6,000 and \$1,000 items appearing on the Delaware Mines Company ledger, Plaintiff's Exhibit 40?

A. Yes, they all bear the same cancellation mark, paid cancellation mark, as shown by the actual ledger sheet.

Mr. Stocking: We'll reserve our offer of these exhibits at the present time.

(Testimony of Leo G. Kraemer.)

(Whereupon, bank signature card, Delaware Mines Corp., was marked Plaintiff's Exhibit No. 42 for identification.)

(Whereupon, bank signature card, Lexington, was marked Plaintiff's Exhibit No. 43 for identification.) [284]

Q. I hand you Plaintiff's exhibit 42 for identification, and ask you if you can identify that as an original record of the bank?

A. This is the authorized signature of the corporation, the Delaware Mines Corporation.

Q. And whose signatures appear on that, if you know?

A. J. A. Allen, F. C. Keane, and William Mul-len.

Q. I hand you exhibit 43 for identification, and ask you if that's an original record of the bank?

A. This is the original authorized signature of the corporation, of the Lexington Silver Lead Mines, Inc.

Q. Whose signatures appear there?

A. J. A. Allen, F. C. Keane, and Irene Vermillion.

Mr. Stocking: We'll offer Exhibits 42 and 43 in evidence at this time.

Mr. Etter: May we ask a question or two on voir dire?

The Court: Surely.

(Testimony of Leo G. Kraemer.)

Voir Dire Examination

By Mr. Etter:

Q. Mr. Kraemer, handing you Plaintiff's for identification 43, I note a stamp there. Can you tell me what that stamp indicates as to that date?

A. No, I couldn't tell you. I don't remember whether it came in my window or not; I wouldn't know.

Q. Well, what would that stamp mean? What does that date [285] mean, stamped on there? How does it get there ordinarily, in the course of your banking practice?

A. I wouldn't know. There's no place for a date on the card.

Q. No place for a date on the card?

A. No, unless it was dated as filed by the girl, or put away; I don't know.

Q. Filed by the girl or put away; what do you mean, filed or put away?

A. Well, we have files where we keep signature cards, and they're kept up to date, and I don't know whether they stamp them or not.

Q. Isn't it entirely possible this card was never filed for record or use until April 18, 1948?

A. I don't know.

Q. Where did you get this card?

A. Took it out of the signature file.

Q. You don't know when it got in the signature file?

A. No, I don't know.

Q. Do you know whether it was in the file in the year 1946?

A. I wouldn't know.

(Testimony of Leo G. Kraemer.)

Q. Or the year 1947?

A. I wouldn't know. I have nothing to do with the records of the signature cards.

Q. And you merely brought it down here; who filed it in that file? [286]

A. It's the authorized signature card of the corporation; it probably was in there, if we knew the corporation was organized.

Q. But you don't know what this April 18, 1948, is? . . . A. I don't know what that is.

Q. Mr. Kraemer, have you ever seen a stamped date April 18, 1948, or any other stamped date with that type of imprint on a deposit card before?

Mr. Stocking: Just a moment; I think that's April 19, 1946. Is that the one you're referring to? It's not 1948. It looks more like a 6 to me.

Q. It looks like an 8, but have you seen a stamp like that before?

A. Each teller's window has a date stamp; probably every employee in the bank has a date stamp.

Direct Examination

(Continued)

By Mr. Stocking:

Q. Can you tell whether that's a 6 or 8?

A. It looks like a 6 to me; I wouldn't swear whether it's a 6 or an 8.

Q. Do you recall whether there was a change in the name of the Montana Leasing Company account to Lexington Silver Mines, and then Lexington Silver Lead Mines, Inc.?

A. That's right.

(Testimony of Leo G. Kraemer.)

Q. Sometime during the first part of 1946?

A. I don't remember the exact date, no. [287]

Q. Do you have your ledger sheets here?

A. The ledger sheet is there. You can tell by it. The Lexington was opened, here's the first date of the Lexington.

Q. What was the first date of the Lexington?

A. The Lexington account was opened on January 16, 1946.

Q. And that was opened under the account of what? A. Lexington Silver Mines, Inc.

Q. You're now referring to the original ledger sheet of the bank? A. That's right.

Q. And what authorization does it show on the ledger sheet?

The Court: What date was that?

Q. January 16, 1946.

A. It shows the authorization of J. A. Allen, F. C. Keane, or Irene Vermillion.

Q. Now, later, was that same account carried in the name of Lexington Silver Lead Mines?

A. That's right.

The Court: What was this name on January 16, 1946?

A. The Lexington Silver Mines, Inc.

Mr. Stocking: I had offered those.

Mr. Etter: What appear to be signature cards, as to these exhibits, Plaintiff's 42 and 43, the defendant objects at this time; from the state of the record so far [288] the exhibits are incompetent,

(Testimony of Leo G. Kraemer.)

irrelevant and immaterial to prove any issue made thus far in this case, not connected up at least so far as the defendant is concerned with any count in the indictment, a relationship isn't shown with any privity at all by reason of these cards with any crime charged in the indictment; incompetent, irrelevant and immaterial.

The Court: Let me see them. Perhaps I ought to see those three checks too. Ruling reserved as to exhibits 42 and 43 for identification.

(Whereupon, deposit slip, Callahan Consolidated, 8/7/45, was marked Plaintiff's Exhibit No. 44 for identification.)

Q. (By Mr. Stocking): I hand you plaintiff's exhibit 44 for identification, and ask if you can identify that? A. Just the name on it.

Q. Yes, can you tell what that is?

A. That's a duplicate deposit slip, the First National Bank of Wallace, Wallace, Idaho.

Q. Does that bear the stamp of the bank as a duplicate?

A. Yes, it shows duplicate, First National Bank of Wallace, George M. Zeller, cashier.

Q. That's for the Callahan Consolidated Mines?

A. Yes; it's dated August 7, 1945.

Q. Now, referring to Exhibit 41-a—by the way, whose signature [289] appears on the exhibits, 41, 41-a and 41-b, the Delaware Mines Corporation checks?

(Testimony of Leo G. Kraemer.)

A. J. A. Allen and F. C. Keane on all three of them.

Q. Referring to Exhibit 41-a, can you identify that in connection with this Exhibit 44?

A. It's a check for \$6,000 payable to the Calahan Consolidated Mines, and it bears the First National Bank of Wallace clearing stamp of August 8, 1945, the date of the deposit, and—the date of the deposit was August 7, and the clearing stamp, it cleared out of the First National Bank August 8, and was paid by our bank on August 8, 1945.

Mr. Stocking: I think that's all.

Cross-Examination

By Mr. Etter:

Q. Mr. Kraemer, did you say there was a deposit slip to the credit of the Coeur d'Alene Consolidated Silver Lead Mines Inc., there? At the time as indicated by this deposit slip was there an account current at your bank, the Idaho First National Bank, of the Coeur d'Alene Consolidated Silver Lead Mines, Inc.?

A. I couldn't tell you without looking at the ledger sheets. They're right here, if you want me to look.

Q. Would it take you very long?

A. No, I don't think so.

Q. That would be as of that date, May 22, 1946.

The Court: May 22, 1946? [290]

Q. Yes, your Honor.

A. Maybe I haven't got those here; I don't

(Testimony of Leo G. Kraemer.)

know. I haven't the ledger sheet here, but it seems to me it was just an in and out proposition; there was no account at the time at our bank.

Mr. Stocking: Yes, you have that, I think it was in this other, I'm pretty sure.

A. Here's the only ledger sheet of the Coeur d'Alene Consolidated Lead Silver Mines; it shows the \$25,000.

Mr. Stocking: Speak up.

The Court: You're talking to the jury, not to Mr. Etter.

A. Here's a Coeur d'Alene Consolidated Lead and Silver Mines, Inc., ledger sheet; it shows one deposit and one withdrawal, sheet number 1.

Q. And that is indicated by this slip; there was no account other than the deposit and the withdrawal, in other words, the making of that check?

A. That's right.

Q. Was there anything on file in your bank at that time authorizing the listing or making of an account by the Coeur d'Alene Consolidated Silver Lead Mines, with your bank?

A. On Exhibit number 38, the deposit slip for \$25,000 to Coeur d'Alene Consolidated Lead and Silver Mines, at this [291] time was the opening of the account, and it said that no withdrawals, it was subject to the escrow between this company and the Coeur d'Alene Mines, as shown by this escrow agreement.

Q. I see; well, there were no names on file, then?

(Testimony of Leo G. Kraemer.)

A. There were no names. In other words, it was connected with the escrow agreement.

Mr. Etter: That's all.

Redirect Examination

By Mr. Stocking:

Q. It was opened, then, just for the purpose of obtaining this cashier's check for \$25,000 payable to Coeur d'Alene Mines Corporation, which is attached to the agreement marked Exhibit 39 for identification?

A. That's right.

Q. It bears Mr. Allen's signature?

A. That's right.

Mr. Stocking: That's all.

The Court: You say the escrow bears Mr. Allen's signature?

Q. Yes. A. Yes.

(Whereupon, there being no further questions, the witness was excused.)

BEATRICE McLEAN FRENCH

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows: [292]

Direct Examination

By Mr. Stocking:

Q. State your name, please.

A. Beatrice McLean French.

Q. And Beatrice McLean was your maiden name?

A. That's right.

Q. And you were married when, Mrs. French?

A. December, 1947.

(Testimony of Beatrice McLean French.)

Q. Are you acquainted with the defendant James A. Allen? A. Yes.

Q. How long have you known Mr. Allen?

A. Oh, about seven years.

Q. Where do you reside, Mrs. French?

A. In Wallace, Idaho.

Q. And how long have you resided in Wallace or the vicinity of Wallace? A. All my life.

Q. What is your present employment?

A. I'm secretary for the Callahan Consolidated.

Q. The Callahan Consolidated Mining Company?

A. Mines, Inc.

Q. Mines, Inc.? A. Yes.

Q. And your employer then is Mr. Donald Callahan?

A. Yes, he's president of the company.

Q. How long have you been employed by that company? [293]

A. Since January 19, 1942.

Q. Are you acquainted with the Pilot Silver Lead Mines, Inc.? A. Yes.

Q. And were you ever employed by that corporation? A. Yes.

Q. When were you so employed?

A. It was at the time the original issue was put out.

Q. And that was beginning about May, 1946?

A. I can't remember whether it's May or June; it was in the early part of 1946.

(Testimony of Beatrice McLean French.)

Q. Who employed you to assist in getting out this original issue? A. Mr. Allen.

Q. Mr. Allen. Do you recall the circumstances, and what was said?

A. Well, as I remember it, Mr. Allen called me and asked me if I would help Mrs. Vermillion issue the original stock.

Q. And were there any arrangements made at that time or anything said about compensation?

A. There was to be \$150.00 a month paid, and we were to divide it \$75.00 each.

Q. That was between you and Mrs. Vermillion?

A. Mrs. Vermillion.

Q. I hand you what has been marked for identification Exhibits 41, 41-a and 41-b, and ask you if you can identify those [294] three exhibits, please?

A. Well, they are Delaware Mines Corporation checks.

Q. And did you ever have any of the records of the Delaware Mines Corporation in your office or under your control?

A. I don't understand that question.

Q. Well, I mean did you ever have any of these checks in your possession, these Delaware Mines Corporation checks? A. Yes.

Q. And did you have any of these checks in your possession during the month of August, 1945, to the best of your recollection?

A. Well, I probably did.

(Testimony of Beatrice McLean French.)

Q. What was the practice at that time in connection with leaving Delaware Mines Corporation checks with you?

A. Well, I had signed checks most of the time.

Q. And they were signed by who?

A. By Mr. Keane or Mr. Allen, and as I remember it, sometimes by William Mullen, Sr., who is deceased.

Q. And he died early in 1945, did he not, prior to this date?

A. I don't recall the date of his death.

Q. And what was the practice, did you have a regular check book with the checks still intact in the book, or were you given separate checks with signatures on them?

A. I was given separate checks.

Q. And they would contain these signatures and be blank checks? [295]

A. That's right.

Q. And who gave you those signed checks?

A. Well, either Mr. Keane or Mr. Allen.

Q. And from time to time you would prepare checks for them?

A. That's right.

Q. I'll hand you plaintiff's exhibit 34—I'll hand you plaintiff's exhibits 6-a and 6-b, and in connection with those——

The Court: Are you handing 34, or not?

Q. Yes, together with plaintiff's exhibit 34, and ask you if you can identify plaintiff's exhibit 34 in connection with plaintiff's exhibit 6-a?

A. That's these two?

(Testimony of Beatrice McLean French.)

Q. Just a moment; with plaintiff's exhibit 6-b, excuse me. Yes. No, that isn't right either. May I strike that question and begin over again?

The Court: You may.

Q. I'll hand you plaintiff's exhibit 35, and ask you if you can identify that exhibit in connection with plaintiff's exhibit 41-b, both of these exhibits being for identification?

A. I don't understand that question either.

Q. Can you identify exhibit 35 in connection with this exhibit 41-b? Have you ever seen exhibit 35 before?

A. That's this? [296]

Q. Yes. A. Yes, I have.

Q. And you can identify it? A. Yes.

Q. You say you can? A. I can, yes.

Q. And what is it, please?

A. It's a deposit slip for the Montana Leasing Company.

Q. Of what date? A. August 5, 1945.

Q. And in whose handwriting?

A. It looks like my handwriting.

Q. And now can you identify that deposit slip in connection with Plaintiff's exhibit 41-b, which is a \$3,000 check to Montana Leasing Company from Delaware Mines Corporation?

A. The date is the same, the name of the company is the same, and the amount is the same. Does that answer your question?

Q. And what did you write on your deposit slip of that date, what notation did you make?

(Testimony of Beatrice McLean French.)

A. Delaware Mines, \$3,000.

Q. So that the date on both are the same, the payee is the same as the person to whom the deposit slip was made out in favor of, and the name of the check, Delaware Mines, is identical with the Delaware Mines Corporation check, and the amount is identical, is that correct? [297]

A. That's correct.

Q. And was that check then deposited—was 41-b deposited by you in the Montana Leasing Company account with that deposit slip?

A. I have no recollection of making the deposit.

Q. You have no independent recollection?

A. That's right.

Q. Now, showing you Plaintiff's exhibit 34, I'll ask if you can identify that exhibit?

A. This?

Q. Yes.

A. It's a deposit slip to the Delaware Mines Corporation dated August 7, 1945.

Q. And in whose handwriting is that deposit slip? A. It looks like my handwriting.

Q. And what is the notation that you made on there?

A. "Lucky Friday Ext. Mining Company, \$10,000."

Q. Now, referring to——

The Court: How much?

A. \$10,000.

The Court: Just a moment. This witness has

(Testimony of Beatrice McLean French.)

been on the stand a fair time, and my idea is that there's some of the jurors that could have missed some things that she said. Now, anytime she talks and the jury doesn't hear she might as well have stayed home. Counsel have the [298] obligation of seeing that the jury hears a witness easily. I shouldn't have the obligation.

Mr. Stocking: Yes, I'm sorry.

The Court: How much of this witness has been heard by the jury? Have you heard it all?

Alternate Juror Schulein: It's rather hard.

A. (Witness): I'll try to speak up. I have a very sore throat.

Mr. Stocking: Well, do the best you can, Mrs. French.

* * *

(Noon recess.)

Spokane, Washington

Wednesday, June 8, 1949, 1:30 o'clock p.m. [299]

(All parties present as before, and the trial was resumed.)

Direct Examination

(Continued)

By Mr. Stocking:

Q. I was referring to Exhibit 34, which you stated was a deposit slip written in your handwriting, Delaware Mining Corporation, August 7, 1945; and now, referring to Plaintiff's Exhibit 6-a which has been admitted in evidence, a \$10,000

(Testimony of Beatrice McLean French.)

check by Lucky Friday Extension Mining Company to Delaware Mines Corporation signed by Irene Vermillion dated August 7, 1945, what have you to say as to the connection between Exhibit 6-a and 34? Is that the check that's referred to?

A. Yes.

Q. That was deposited for the Delaware Mines Corporation account? A. Yes.

The Court: By exhibit 34?

Q. Exhibit 6-a, the check, was deposited with Exhibit 34, the bank deposit slip; and now referring to Plaintiff's proposed exhibit number 44, can you identify that, please?

A. It is a duplicate deposit slip, the Callahan Consolidated Mines, Inc., dated August 7, 1945, a Delaware Mines check, \$6,000.

Q. And who prepared that slip?

A. That is my handwriting. [300]

Q. Now, with reference to the Delaware Mines Corporation check of August 7, 1945, which has been identified as Exhibit 41-a, can you state whether or not that is a check which was deposited with that slip on that day by you?

A. I don't know that it was deposited by me.

Q. Well, you prepared the deposit slip?

A. It looks like it.

Q. This looks like the check? A. Yes.

Q. What is that notation on the bottom of it? Is that "Credit Delaware loan"? A. Yes.

Q. And you made that notation also?

A. Yes.

(Testimony of Beatrice McLean French.)

Q. Now, in that connection, were you familiar with a transaction in which a loan had been made by Callahan Consolidated to the Delaware Mines Corporation?

A. I don't understand that question.

Q. Well, were you acquainted with that transaction whereby a loan had previously been made? You had credited this Delaware loan; what did you refer to?

A. Well, it stood on the books as an account receivable, I imagine.

Q. And there had been a loan made by Callahan to Delaware, is that correct? [301]

A. Well, that was a common practice.

Q. You mean from time to time loans would be made by Callahan to Delaware?

A. By Callahan Consolidated.

Q. That's right, Callahan Consolidated.

(Whereupon, check to Delaware from Callahan, 6/16/45, was marked Plaintiff's Exhibit No. 45 for identification.)

Q. Now, in that connection, I'll hand you what has been marked Plaintiff's 45 for identification, and ask you if you can identify those records?

A. A Callahan Consolidated voucher check dated June 16, 1945, made payable to the Delaware Mines Corporation in the amount of \$6,000, and it's signed by D. A. Callahan and Beatrice McLean.

Q. And Beatrice McLean was yourself?

(Testimony of Beatrice McLean French.)

A. That's right.

Q. And together with that, what is the second sheet of this exhibit?

A. That's a voucher copy of the same check number 3305, dated June 16, 1945, payable to the Delaware Mines Corporation in the amount of \$6,000. It's been checked and entered by B.M.; that's me.

Q. That was checked and entered on the books by you at the time the loan was made and the check was written? [302]

A. Entered on voucher register, page 15, loan to be repaid July 15, 1945, \$6,000.

Q. Now, can you state whether or not this \$6,000 check, Exhibit 41-a, was the check which repaid this particular loan? You checked your records, did you?

A. Yes, I checked my records, and that repays the loan of \$6,000.

Q. Were you in the office when that particular loan was made by a representative of Delaware Mines?

A. You mean I was present in the office at the time?

Q. Yes; you wrote the check.

A. Well, I did write the check, on instructions from Mr. Callahan. I wouldn't be present when the——

Q. You weren't present when the loan was negotiated? A. No.

(Testimony of Beatrice McLean French.)

Q. Do you know who negotiated that particular loan? A. No.

Q. You said it was a common practice for these loans to be made from Callahan Consolidated to Delaware, and have you ever been present when any of these loans have been negotiated?

A. Not to the best of my recollection.

Q. You don't know whether Mr. Keane or Mr. Allen negotiated the loans?

A. No, I can't say. Mr. Callahan would take care of all the—— [303]

Q. He took care of all that detail?

A. I would be instructed to write the check, but as far as having anything to do with it——

Mr. Stocking: From Exhibit 8-c I am taking two checks, and I would like to have them marked 8-c-1 and 8-c-2, please; that's proposed Exhibit 8-c.

(Whereupon, check, Montana Leasing to Inland Empire Racing Assn. was marked for Plaintiff's Exhibit No. 8-c-1 for identification.)

(Whereupon, check, Montana Leasing to Kent & Rusch was marked Plaintiff's Exhibit No. 8-c-2 for identification.)

Q. Handing you Plaintiff's Exhibits 8-c-1 and 8-c-2, I'll ask you if you can identify the signature on those exhibits? Do you know whose signature that is?

A. Well, it looks like Mr. J. A. Allen's signature.

Q. You are familiar with his signature?

(Testimony of Beatrice McLean French.)

A. Yes.

Q. And referring to these Exhibits 8-c-1, 8-c-2, Exhibit 6-a and 6-b, and Exhibits 41, 41-a and 41-b, what have you to say as to the preparation of all of those exhibits?

A. Would you repeat the question?

Q. I say, with regard to the preparation of all of those exhibits, can you identify them as to who typed them or what check protector was used on those exhibits?

Mr. Etter: You're referring to all of them, now?

Mr. Stocking: I'm referring to all of those exhibits I mentioned, seven exhibits.

A. Well, it looks like the type on the Callahan Underwood typewriter, and it looks like our check protector, because it was in very bad condition about that time.

Q. And did you at my request check your records for August 7, 1945, to determine whether or not you were working at your desk in the office on that particular day?

A. Well, I must have been working. I don't recall checking the records.

Q. You stated that you weren't on a vacation period at that particular time?

A. No, I was present in the office.

Q. On that particular date? A. Yes.

Q. Now, when Mr. Allen is in Wallace where does he make his headquarters, where does he make his office?

(Testimony of Beatrice McLean French.)

A. Well, he has used the Callahan office since I've worked there, during the last seven years, he has been in and out of the Callahan office, and he was usually there at various times.

Q. And from time to time you have prepared checks for him and done other stenographic services for him, is that correct?

A. I have done some work for Mr. Allen, yes.

Q. And the preparation of checks was included in that work? A. Yes.

Q. On various companies?

A. I don't have any independent recollection of just what companies they were on, but I have typed checks for him.

Q. Now, do you have any independent recollection of Mr. Allen being in your office on August 7, 1945, at the time these exhibits to which I've just referred and which you've just identified were prepared? Do you have any independent recollection of his being there on that particular date?

A. No, I haven't.

Q. You've tried to recall?

A. I have. I couldn't say that Mr. Allen was in the office on that date.

Mr. Etter: Would you repeat that, please, Mrs. French?

A. I can't say that Mr. Allen was in the office that date. I have no independent recollection of his being there.

Mr. Etter: That was what date?

(Testimony of Beatrice McLean French.)

Q. August 7, 1945; but with reference to Exhibits 8-c-1 and 8-c-2, would those exhibits have been prepared by you for any other person than James A. Allen?

A. No, not since—with Mr. Allen's signature on the check I don't imagine I would have prepared them for anyone else. [306]

Q. Now, at my request did you furnish me with checks on the Callahan Corporation bearing your signature which you did prepare on August 6, 1945, and on August 28, 1945, for the purpose of comparison with the exhibits to which I've just referred?

A. Yes, sir.

Mr. Stocking: I'll have these marked.

The Court: What was the other date?

Mr. Stocking: August 28, 1945. That was the date of the other Lexington check that was filled in in blank.

(Whereupon, two checks of Callahan Consolidated, 8/6/45 and 8/28/45, were marked Plaintiff's Exhibit No. 46 for identification.)

Q. And are these the two checks to which I've just referred, which have been marked as Exhibit 46, which you've furnished to me for the purposes of comparison?

A. August 6 and August 28, 1945.

Q. Those checks were prepared by you on those dates, and the check protector used was the check protector on your desk, is that correct?

(Testimony of Beatrice McLean French.)

A. That's correct.

Mr. Stocking: At this time we'll offer in evidence Plaintiff's exhibit 45, identified as the \$6,000 check and voucher from Callahan Consolidated to Delaware Mines Corporation; we renew our offer, if an offer has been [307] made, as to Plaintiff's Exhibits 41, 41-a and 41-b, being the three Delaware Corporation checks totalling \$10,000 and dated August 7, 1945; Exhibit 46, consisting of two checks furnished for the purpose of comparison and identified by this witness; Exhibits 8-c-1 and 8-c-2, being the two Montana Leasing Company checks identified by the signature "J. A. Allen" and both dated August 7, 1945, which have been identified as bearing this check protector and written on this typewriter, and Exhibit 34, being the deposit slip prepared by this witness for the deposit of the \$10,000 Lucky Friday Extension check on August 7, 1945, to Delaware Mines Corporation; Exhibit 35, being the deposit slip prepared by this witness dated August 7, 1945, and whereby the \$3,000 check drawn by the Delaware Mines to Montana Leasing Company was deposited in Montana Leasing Company account, and deposit slip bearing identification 44, being Callahan Consolidated Mines, Inc., deposit slip of August 7, 1945, whereby the Delaware Mines check in payment of the \$6,000 loan was deposited. We will offer all of those exhibits at this time.

Mr. Etter: At this time, your Honor, the defendant will object to the admission of all of these

(Testimony of Beatrice McLean French.)

exhibits and each exhibit separately on the ground and for the reason that no proper foundation has been laid for the admission of such exhibits under the evidence so far adduced in this [308] case or under any allegation made in any count in the indictment with reference to the defendant James A. Allen; on the further ground that all of the exhibits considered together are incompetent, irrelevant and immaterial to prove any allegation under any of the counts laid in the indictment with reference to the defendant Allen, and on the further ground that all of the exhibits, considered collectively, represent a hodge-podge of evidence incompetent, irrelevant and immaterial to this particular case, and will only lead the jury at the present time in the state of the record to conjecture and speculation as to the effect of all of the exhibits considered together or each exhibit considered separately. The entire transaction attempted to be shown by all of the exhibits in this case is not a material issue in this case, and does not show that even if the defendant Allen were privy to one or two of the particular transactions involved, that any of such privity of the defendant Allen brings him within any proof under the allegations and counts of the indictment. Likewise, we object further specifically to the admission of Plaintiff's identification 46, presented to the Court for admission on the ground of comparison, on the further ground that a comparison at this time is incompetent, irrelevant and

(Testimony of Beatrice McLean French.)

immaterial under the issues made in this case and the purpose sought to be made by the admission of these exhibits.

The Court: I would like to see all the exhibits which have been admitted in evidence, actually, plus Exhibit 46 for identification. 6-a and 6-b have already been admitted. The objection to Exhibit 46 is overruled, and Exhibit 46 is admitted.

Mr. Etter: Exception.

The Court: Noted.

(Whereupon, Plaintiff's Exhibit No. 46 for identification was admitted in evidence.)

The Court: As to Exhibit 45 for identification, exhibits 41-a, 41, 41-b, exhibits 8-c-1 and 8-c-2, exhibit 34, exhibit 35, exhibit 44, ruling reserved. Are you through?

Mr. Stocking: No, I'm not, if your Honor please. May I proceed?

The Court: Yes.

Direct Examination

(Continued)

Q. (By Mr. Stocking): Mrs. French, when you were employed by the Pilot Company to assist in the original issue of the Pilot stock, what were your specific duties?

A. Typing the letters of transmittal and issuing the certificates; issuing the certificates means that I filled in the stubs and typed them.

Q. You worked with Mrs. Vermillion in doing

(Testimony of Beatrice McLean French.)

that? [310] A. Yes.

Q. And under whose direction were you working when you were carrying out those functions?

The Court: This is with regard to the Pilot?

Mr. Stocking: With regard to the Pilot, when she was employed with the Pilot.

A. I don't understand that question.

Q. I say, under whose directions were you acting when you were doing these things?

A. Making the stock transfers, you mean?

Q. Doing whatever you were doing as an employee, yes; who did you consider as your employer?

A. Well, Mr. Allen was the one that asked me to help Irene, he and Mr. Keane.

Q. Yes, I think you mentioned that, and then when you were carrying out your duties who specifically, if anyone, told you what to do?

A. Mrs. Vermillion.

Q. You were acting more or less under her direction? A. That's correct.

Q. I hand you a portion of what has been marked for identification as Exhibit 29, and this portion consists of certificates running from number 543 through 1500, but not inclusive. Will you examine those to determine whether or not you can identify them as part of the records of the [311] Pilot Silver Lead Mines, Inc.?

A. They are the stock certificates.

Q. They are the stock certificates?

A. Of the Pilot Silver Lead.

(Testimony of Beatrice McLean French.)

Q. Yes; and the name "B. McLean," which appears, it's marked "A. Secretary" on the bottom line, that is your signature on these certificates, these particular certificates? A. Yes, sir.

Q. And these were prepared at the time that you were assisting in the issuing of certificates for Pilot, is that correct?

A. Now, that question, do you mean I prepared all of them?

Q. I say, these were signed by you at the time that you were assisting in the issuance of these certificates, is that correct?

A. That is correct.

(Whereupon, stock certificates in Lucky Friday Extension were marked Plaintiff's Exhibit No. 47 for identification.)

(Whereupon, six checks Gibson Co. to cash and B. McLean were marked Plaintiff's Exhibit No. 48 for identification.)

Q. Now, Mrs. French, handing you Plaintiff's Exhibit 47 for identification, can you identify those particular certificates? These are certificates 3508, 3512, 3514, 3515, 3516, and 3517. I'll ask you to examine them, all contained [312] in this one exhibit. Are you able to identify these certificates?

A. Yes.

Q. And they appear to be issued in the name of B. A. McLean, is that correct?

A. That's correct.

(Testimony of Beatrice McLean French.)

Q. And they also appear to have your endorsement on the back, "B. A. McLean"; that is your signature, is it, on the back of each certificate?

A. Yes, sir.

Q. And can you tell us how those stock certificates happened to be issued in your name, what the circumstances were?

A. It was issued in my name, I guess, just as street stock; I had no interest or ownership in the stock.

Q. And who did have any interest or ownership in the stock, to your knowledge?

A. I issued them at the instruction of Mr. Allen, and mailed them to him.

Q. Mailed them to him? A. Yes.

Q. And he instructed you to have them issued in your name? Did he instruct you to have them issued in your name? A. Yes, sir.

Q. And did he also instruct you to endorse the certificates [313] before you mailed them to him?

A. Yes, sir.

(Whereupon, copy letter to Allen was marked Plaintiff's Exhibit No. 49 for identification.)

Q. Did he state the purpose of having this done in that manner? What did he say?

A. He just called me and asked me to issue the stock in my name and endorse it and mail it to him.

Q. Do you recall what certificates this came out of, what stock it came out of?

(Testimony of Beatrice McLean French.)

A. It was out of one large certificate; I can't recall the number.

Q. Was that the Grismer certificate?

A. Well, most of those large certificates were in Mr. Grismer's name.

Q. And showing you Exhibit 49, is that a copy of the letter with which these certificates were mailed to Mr. Allen? A. Yes.

Q. That represents those certificates 3508 to 3517 inclusive, so that at the time you sent them down there were some certificates which had not come back for cancellation, is that correct, there were other certificates? A. Yes.

Q. Now, referring to Plaintiff's Exhibit 48, which appear to be five checks, E. J. Gibson checks, made out to B. A. [314] McLean, and one made out to cash, will you state which of these checks in this exhibit you can identify?

A. Do you want me to look them over?

Q. Look them over and just name which checks you can identify, as having endorsed.

A. I did not endorse this check.

Q. This is check March 21, 1947, this name on the back, B. A. McLean, and do you recognize that signature under that? A. J. A. Allen.

Q. Yes, and that endorsement does not appear to be your endorsement? A. No.

Q. All right, it does not. Now, refer to the next check in this series, of September 26, 1947. Is that your endorsement? A. Yes, it is.

(Testimony of Beatrice McLean French.)

Q. That is your endorsement, "Deposit to the account——

The Court: Which check is that?

Q. September 26, 1947; on the reverse "Deposit to the account of J. A. Allen, B. A. McLean" that is your endorsement? A. Yes, it is.

Q. And who requested that you make that endorsement on there?

A. Well, it was mailed to me for deposit to that account. [315] and I just endorsed it and put it in Mr. Allen's account.

Q. It was deposited in Mr. Allen's account; now, refer to another check in this Exhibit 48 for identification, April 7, 1947; does that appear to contain your endorsement?

A. No, that is not my endorsement.

Q. That appears to contain "B. A. McLean" and then underneath, "J. A. Allen." Is that Mr. Allen's signature?

A. To the best of my knowledge.

Q. And that check did not come into your possession? A. Not that I know of.

Q. This March 18, 1947, does that check contain your endorsement? A. No, it does not.

Q. And that contains whose signature underneath your name? A. J. A. Allen.

Q. And that check did not come into your possession? A. No.

Q. And a check dated March 15, 1947, of this series, does that check contain your endorsement?

(Testimony of Beatrice McLean French.)

A. Yes, sir.

Q. And that's marked "Pay to the order of the Idaho First National Bank, for the account of J. A. Allen, B. A. McLean" and did you deposit that to his account? A. Yes, sir. [316]

Q. Was that at his instructions?

A. It must have been.

Q. Now, this check of January 20, 1947, in this Exhibit 48, these E. J. Gibson Company checks, payable to cash and bearing no endorsement, did you ever see that check?

A. No, I haven't seen that check.

Q. You didn't get the proceeds from that check—— A. No, sir.

Q. ——for \$2,238.00? A. I did not.

Q. You didn't get the proceeds from any of these checks, then, that are made out in your name in this Exhibit 48?

A. No, because I had no ownership in the stock.

Mr. Stocking: We'll offer in evidence Exhibit 49, Exhibit 47, being the stock certificates, and reserve the offer of 48. May I ask one more question while they're examining the checks?

The Court: Well, it's rather hard for them to examine the exhibits and protect themselves as to your questions.

Mr. Stocking: Well, I'd like to have it considered with the offer, if the Court please.

The Court: Well, after they've got through ex-

(Testimony of Beatrice McLean French.)

amining, you may ask your question, and then I'll rule.

Mr. Etter: Have you another question, counsel, that [317] you want to propound?

Mr. Stocking: Yes.

Q. (By Mr. Stocking): Did you ever open any account, Mrs. French, at E. J. Gibson Company of Spokane? A. No, sir.

Q. Did you to your knowledge have an account there with your approval and authority opened for you by anybody else?

A. Well, I don't know how you could consider it with my approval and authority.

Q. If any account was opened there it was without your knowledge or approval, is that correct?

A. Well, should I state in my own words just how I found out about it?

Q. Yes.

A. Mr. Allen told me he was selling stock through my name in E. J. Gibson Company, and when he sent the checks up I deposited them to his account. That's all I knew about the transaction.

Q. You didn't make any particular objection?

A. No.

Mr. Stocking: I'll renew my offer.

Mr. Etter: I'm going to object at this time, your Honor, to the admission of these exhibits on the ground that at the present time they're incompetent, irrelevant, [318] immaterial, and no proper foundation has been laid to connect the exhibits themselves with any unlawful act of the defendant as alleged

(Testimony of Beatrice McLean French.)

and charged under any count of the indictment at the present time. At the present time they're incompetent, irrelevant and immaterial, because so far as the evidence thus far adduced, there's no connection shown of the defendant in the particular sale if there was a sale of this stock, with any count or allegation in the indictment at this time.

The Court: Let me see them.

Mr. Stocking: I think in considering the offer these exhibits which have been identified should be referred to.

The Court: Well, the checks have not been offered.

Mr. Stocking: No; they have been identified; there is testimony concerning them which bore on the other exhibits.

The Court: Exhibit 47 admitted, objection of the defendant overruled.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibit No. 47 for identification was admitted in evidence.)

The Court: As to Exhibit 49 for identification, there's been no evidence as to the signature on the return receipt of the registry slip. Ruling reserved. You may proceed.

Direct Examination

(Continued)

By Mr. Stocking:

Q. Mrs. French, were you ever given any instructions by the defendant Allen as to the transfers

(Testimony of Beatrice McLean French.)

of stock from Grismer stock, the delivery of stock certificates of Grismer stock?

A. I issued stock for Mr. Allen which came from Mr. Grismer's stock, if that's a proper answer.

Q. Yes, you did that, I think you testified to that. Did you also at any time at Mr. Allen's instructions take any of the stock certificates which were in Mr. Grismer's name for delivery to any other person?

A. What do you mean by taking it?

Q. Well, I mean take any which had been left in the Callahan Consolidated office?

A. Yes, I cancelled them to cover stock that had been issued.

Q. And that was at Mr. Allen's instructions?

A. Yes, sir.

Q. Do you recall about when that was, what the circumstances were?

A. By that do you mean dates, or——

Q. Yes, I mean dates, and what occasion there was for cancelling his stock.

A. Well, there was stock issued for Mr. Allen, and then in turn I cancelled the stock that was kept there in the [320] drawer. Whether it was the private property of Mr. Grismer, it was issued in his name, and I just thought it was street stock.

Q. It was issued in his name?

A. It was endorsed.

Q. Endorsed by Mr. Grismer?

A. I'm quite certain it was endorsed.

Q. And left in your drawer?

(Testimony of Beatrice McLean French.)

A. It was left in the file in the back office, and I guess that was considered Pilot and Lucky Friday Extension and Mr. Grismer's file.

Q. And at Mr. Allen's instructions you did this, is that correct? A. That is correct.

Mr. Stocking: You may cross-examine.

Cross-Examination

By Mr. Etter:

Q. Mrs. French, do you personally know whether Mr. Allen had made any stock purchases from Mr. Grismer? A. What is the question?

Q. Do you know whether Mr. Allen had made any purchase of stock from Mr. Grismer, or any arrangement to purchase some of Mr. Grismer's stock? A. No, I don't.

Q. Did Mr. Allen ever tell you whether or not he had, or did he merely instruct you to issue or transfer shares off of [321] Mr. Grismer's certificate?

A. The stock was in the name of Mr. Grismer. That's not clear to me, whether that was Mr. Grismer's stock or not; I don't know. I considered it street stock, and I used it.

Q. You considered it the same kind of stock——

A. That it was Mr. Allen's, that's the way I thought about it; it was there in an envelope, and Mr. Allen told me to issue stock, and I cancelled that stock against it.

Q. And the street stock that you speak of, that was the same type as the stock that was admitted, Mr. Grismer's name was on it and endorsed, the

(Testimony of Beatrice McLean French.)

same as your name is on it and endorsed, is that correct? I mean, it was street stock in that sense?

A. Yes, it was there in the file; it was in the file, and I issued the stock, and I used that stock to cover the other stock that I issued.

Q. That's correct. Now, you might explain, Mrs. French, if you can, I think the jury would like to know what do you understand by street stock, what do you mean by street stock?

A. Well, my understanding of street stock is a block of stock issued in my name, like this, in which I have no interest at all. It took me about four or five years to find out that if you owned a thousand shares of stock that you didn't actually have to have that in your name and possess [322] it; I guess that isn't true.

Q. It's your understanding, then, that you could have four hundred thousand shares in your name, but there wouldn't be any of it belong to you?

A. That's correct.

Q. And that people who own maybe tremendous blocks of stock have that in other people's names?

A. That's my understanding, yes.

Q. And isn't that a common practice in the handling of stocks, mining stocks in particular?

A. I found that out in the last three or four years, yes.

Q. You found it out as a common circumstance in your own handling of stocks, isn't that right?

A. I personally do not own any stock.

(Testimony of Beatrice McLean French.)

Q. No, but I mean in your handling of stock transactions? A. Yes.

Q. And you have had stock transactions possibly on behalf of other people, with brokers?

A. I don't understand that question.

Q. Well, have you sent stock to brokers at the direction of other people during the time you have been handling mining stock? Have you been instructed, say, during the five or six years you've been in this particular job of yours, to send so many shares of this, that or the other stock to a certain broker or individual? [323]

A. I see; very seldom, for individual transfers.

Q. Which was street stock, is that right?

A. Well, I don't know; they usually give us a name and address; whether that's actually going to the person——

Q. You don't know? A. No.

Q. And you send it to the broker in that name?

A. That's right.

Q. And do you or do you not know that brokers themselves carry tremendous amounts of mining securities in street names, and not in their own name? A. I can't say.

Q. But the fact that you held stock in your name as street stock for Mr. Allen wasn't anything unusual in handling mining securities, was it?

A. Well, I don't know as you'd call that I held it; I made it out and mailed it right out, so I wasn't holding it.

(Testimony of Beatrice McLean French.)

Q. And there was nothing unusual to you about that, was there?

A. No, because there had been stock issued in the Pilot, and I considered it the same thing.

Q. And stock had been issued in your name as street *name* to other parties, isn't that so, in the five or six years you've been handling this type of work?

A. Well, the only recollection I have is, I don't know the [324] number of shares, but in the Pilot there was a considerable block of stock issued in my name which I also endorsed, and I had no ownership in it.

Q. Had no ownership, and it went to various people?

A. It went out, and then this particular Lucky Friday Extension stock, other than that I don't think there's ever been any stock issued in my name.

Q. Mrs. French, you've worked in the Callahan office for a number of years, haven't you?

A. Since January 19, 1942.

Q. 1942, and was Mr. Allen at that time an official of the Callahan Consolidated?

A. I don't know that he ever held an official office. I think he had the title at one time, vice president in charge of operations.

Q. In charge of operations?

A. They were constructing a new mill, and he had quite a lot to do with that.

Q. And was Mr. Callahan the president of the Callahan Consolidated?

(Testimony of Beatrice McLean French.)

A. Yes, he has been all the time I've been employed there.

Q. And when you were employed there Mr. Allen and Mr. Callahan worked fairly closely on problems relating to the Callahan Consolidated, is that so?

A. Well, I don't know so much about the internal problems, [325] but Mr. Allen was very active in the building of the mill. That's when I first started to work up there.

Q. And he was active in that respect?

A. Yes.

Q. He was around there a great deal?

A. Yes, that year, more so than any time.

Q. Than any time after, would you say?

A. Well, as far as the Callahan work, we're speaking of the Callahan work.

Q. Yes.

A. I would say I saw a great deal of him. Of course, I just became acquainted with him, and I might have noticed it more.

Q. And as you say, you did considerable work for Mr. Allen and did you write letters for him at different times when he requested it?

A. Yes, sometimes, whenever he happened to be in town. I'm really not a stenographer, though. I did work for him.

Q. Well, aside from stenographic work, if there was some little office work to be done that you were capable of doing, and he requested you to do it, you would ordinarily do it as a favor, isn't that so?

(Testimony of Beatrice McLean French.)

A. That's right.

Q. And you became very well acquainted with Mr. Allen? A. That's true. [326]

Q. Now, when Mr. Allen talked about you assisting on the Pilot, he didn't approach you—I'll put it this way—he didn't tell you that he wanted to employ you, did he? He didn't say it that way?

A. No.

Q. Didn't he tell you, as a matter of fact, Mrs. French, that these two organizations were starting, and there was considerable work probably to be done, and that it might be a chance for you to make a little additional money on this question of aiding in the issue?

A. If I remember, he asked me if I'd help Irene.

Q. Yes, and didn't he say Mr. Evans was sick at the time?

A. That must have been the time Mr. Evans was very ill.

Q. I'm merely trying to refresh your recollection; do you recall he said there was a chance to work there because of the fact Mr. Evans was sick?

A. I don't recall that he said that was the reason. He asked me if I'd help with it, and I know that the Extension work was very far behind, so undoubtedly that is why he—they, I should say, wanted me to help.

Q. And you did work with Mrs. Vermillion?

A. That's true.

Q. And you took your instructions in the office

(Testimony of Beatrice McLean French.)

work from Mrs. Vermillion? A. Yes. [327]

Q. After that time?

A. Yes. Now, we're speaking of the stock transfer instructions, is that right?

Q. Yes, as to that particular issue.

A. Yes.

Q. And you worked with her on that particular issue? A. Yes.

Q. And who paid you for that? Was it the Pilot?

A. Pilot Silver Lead Mines.

Q. Pilot Silver Lead Mines paid you?

A. \$75.00 a month, I got for five months.

Mr. Etter: I think that's all.

Redirect Examination

By Mr. Stocking:

Q. Besides your compensation did you get a small block of stock in Pilot?

A. Yes, I received 5,000 shares of Pilot Silver stock; I thought it was at the same time the original issue went out, but Mrs. Vermillion said that we received it some time later.

Q. Around Christmas time?

A. And she delivered it to me; somewhere I have the letter of transmittal, and it was from a block of stock that was in Mr. Keane's name, I believe.

Mr. Etter: Who delivered it?

A. Mrs. Vermillion, and she had me sign a letter of transmittal. [328] I suppose that is in the Pilot records.

Q. (By Mr. Stocking): You disposed of that stock, did you?

(Testimony of Beatrice McLean French.)

A. Yes, I sold it through Pennaluna Company in Wallace; I believe it was sold through the account of my husband.

Q. Approximately how much did you realize out of it?

A. It was less than four cents a share.

Q. And when you were doing any of this work for Mr. Allen did he ever pay you or compensate you, I mean were you in his employ at that time?

A. During what period?

Q. Well, during the period of 1942, or when he was in and out of the office?

A. Well, there was no specific salary. Mr. Allen has given me a present at Christmas, and times like that, and——

Q. He'd pay you by the particular job, isn't that right?

A. Well, no; I was just doing it as a favor. He was connected with the Callahan Company, and if he had some little chore he wanted done, I took it for granted it was to be done; Mr. Callahan made no objection, and I just did it.

Mr. Stocking: That's all.

Mr. Etter: That's all.

(Whereupon, there being no further questions, the witness was excused.) [329]

GLYNN D. EVANS

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Stocking:

Q. What is your name, please?

A. Glynn D. Evans.

Q. And where do you reside?

A. Wallace, Idaho.

Q. What is your present occupation?

A. Present occupation?

Q. Yes. A. Timekeeper.

Q. And where?

A. For the Day Mines, at Burke, Idaho.

Q. How long have you resided in the vicinity of Wallace? A. Since 1905.

Q. And what has been your background, Mr. Evans, what if any employment in the last few years?

A. Well, I've worked at the post office, the courthouse, and with various mining companies.

Q. You've acted as secretary? A. Sir?

Q. As secretary for various mining companies?

A. Yes, sir.

Q. Are you familiar with the Lucky Friday Extension Mining Company? [330]

A. Yes, sir.

Q. Were you an officer of that company?

A. Yes, sir.

Q. And also an incorporator? A. Yes, sir.

(Testimony of Glynn D. Evans.)

Q. And you're familiar with the Pilot Silver Lead Mines, Inc.?

A. I was sick at that time, and I didn't have anything to do with the Pilot Silver Lead.

Q. Were you one of the officers, though?

A. I was informed that I was.

Q. And were you named as an incorporator of that company, too? A. I believe I was.

Q. Do you know the defendant James Allen?

A. Yes, sir.

Q. How long have you known him?

A. Oh, offhand I'd say four or five years.

Q. And do you know the defendant in this action Clayton Keane? A. Yes, sir.

Q. Joseph Grismer? A. Yes, sir.

Q. How long have you known those men, respectively?

A. Well, I've known Mr. Keane ever since he started practicing in Wallace, and Mr. Grismer for possibly—well, since 1917. [331]

Q. Who first talked to you about the Lucky Friday Extension Mining Company?

A. I believe it was Mr. Keane.

Q. And that was, of course, prior to the organization of the company? A. Yes, sir.

Q. And prior to the organization of the company did you have any conversation with anyone else?

A. Before the company was organized?

Q. Yes, concerning the organization of the company?

(Testimony of Glynn D. Evans.)

A. Well, there was some talk of organizing a company, and that I was going to be an officer in it.

Q. Well, was that conversation with anybody else besides Mr. Keane, this talk you spoke of?

A. I can't recall right now.

Q. You don't recall now just what conversation you might have had before it was organized?

A. No, sir, I do not.

Q. Now, was there some question about you acting as an officer in that company? Were you approached on that question? Did someone ask you to be an officer in this company?

A. I believe so.

Q. And who was that?

A. Well, I thought it was Mr. Keane, and I think Mr. Allen [332] said something about it one or two times up there in the office, that I would be associated with the company, but I wouldn't swear to that right now.

Q. You think he may have been in the office at the time the incorporation was being considered? "In the office" you were referring to Mr. Keane's office, were you not?

A. I was in Mr. Keane's office, yes, sir.

Q. Did you have a small office in there in Mr. Keane's suite of offices?

A. Yes, sir.

Q. In which you did your work as secretary for various mining companies?

A. Yes, sir.

Q. Now, after the formation of the companies were there any regular meetings held?

(Testimony of Glynn D. Evans.)

A. No, sir, I wouldn't call them regular meetings.

Q. Did you keep any minutes in the ordinary course of the business? A. No, sir.

Q. You are familiar with the taking and keeping of minutes? A. Yes, sir.

Q. You've done that for other mining companies? A. Yes, sir.

Q. You were also a director of this company, were you not, as well as an officer? [333]

A. Yes, sir.

Q. Now, what were your duties as secretary of Extension?

A. All that I ever done was transfer stock.

Q. And where would you get your instructions as to the transfer of the stock?

A. They would usually come with the letters from various mining brokers.

Q. And this was in connection with these public offerings of the Extension stock that were made?

A. Yes, sir.

Q. And after the stock was issued what did you do?

A. I usually dropped the—made out the certificate, turned over the check, if I'd open the mail, to Mrs. Vermillion, and then I deposited the letters along with the stock either in the post office or in the mail train going out.

Q. Now, these were the letters you're talking about to send out the stock certificates?

A. Yes, sir.

(Testimony of Glynn D. Evans.)

Q. And they were sent to whom?

A. To the various brokers.

Q. And who prepared those letters?

A. Sir?

Q. Who prepared those letters of transmittal?

A. I did, myself.

(Whereupon, stock certificates [334] in Extension Company were marked Plaintiff's Exhibit No. 50 for identification.)

Q. I'll hand you a number of stock certificates which are in an envelope and identified as Plaintiff's Exhibit 50 for identification, and ask you if you can identify these stock certificates as ones which were issued by the Lucky Friday Extension Mining Company?

A. Yes, sir, these are the ones.

(Whereupon, letters of transmittal Extension stock to Gibson Company were marked Plaintiff's Exhibit No. 51 for identification.)

(Whereupon, letters of transmittal Extension stock to LaVigne Company were marked Plaintiff's Exhibit No. 52 for identification.)

Q. Do you recall which particular brokers participated in the distribution of this Extension stock, original issues?

A. Well, do you mean the original issue?

Q. Yes.

A. I believe it was Gibson & Company and Pen-naluna and Ed LaVigne & Company.

(Testimony of Glynn D. Evans.)

Q. Now, LaVigne and Company and Gibson were located where? A. Spokane.

Q. And Pennaluna was located where?

A. Wallace.

Q. Now, with regard to the certificates for Pennaluna, and [335] with regard to the delivery of the certificates to Pennaluna in Wallace, how was that delivery effected?

A. I delivered them personally.

Q. And the certificates that were delivered to the Spokane brokers you testified were sent through the mails? A. Yes, sir.

Q. Now, will you identify Plaintiff's Exhibit 51?

A. Yes, sir, I made those out.

Q. Just say that so the jury can hear it, will you please?

A. I have made all these certificates out.

Q. All of those letters out that I handed you?

A. Yes, sir; yes, sir.

Q. Now, with regard to Exhibit 51, these appear to be original letters bearing the signature "Glynn D. Evans"; is that your signature on each of these letters? A. It is.

Q. And these were addressed to E. J. Gibson Company, 5 Wall Street, Spokane, Washington?

A. Yes, sir.

Q. And you prepared the letters and put the certificates with these letters— A. Yes, sir.

Q. And mailed them to the—did the envelope contain the same address as the letter had contained?

(Testimony of Glynn D. Evans.)

A. Yes, sir, E. J. Gibson Company, 5 Wall Street, Spokane 11, [336] or 1, Spokane, Washington.

Q. And you placed these in the mails?

A. Yes, sir.

Q. Now, with regard to Exhibit 52, can you identify the letters in that exhibit?

A. Yes, sir, I prepared these the same way.

Q. And your signature appears on these letters, "Glynn D. Evans"? A. Yes, sir.

Q. And these letters appear to be addressed to whom?

A. Edwin LaVigne and Company, Radio Central Building, Spokane.

Q. And you had the certificates which are set forth in each letter accompany this particular letter? A. Yes, sir.

Q. And were they enclosed in envelopes addressed the same as the letter address?

A. Yes, sir.

Q. Did you put those letters in the mail?

A. Yes, sir.

Q. And you mailed them where?

A. Either in the post office or on the train.

Q. And that was where?

A. In Wallace, Idaho.

Q. Now, when you were performing your functions as secretary [337] there, under whose direction and control were you acting?

A. Well, I really don't know how you mean. As

(Testimony of Glynn D. Evans.)

the mail came in the morning, I usually opened the mail, and that was my instructions to make out the certificates as they wanted them and dispatch them.

Q. And what person or persons gave you those instructions as to having the certificates in that mail and making up these letters and mailing them back?

A. Well, Mr. Keane, I would say. I was working in there, and Mrs. Vermillion. That's just the same way that anybody does the work.

Q. Was there any other person that gave you any instructions in connection with the mailing of these letters?

A. Well, we have had telephone calls to make up stock for. It was just over the telephone, and Irene, Mrs. Vermillion, would give me those instructions to make out the certificates, and I would make them out and give them to her.

Q. And what certificates are those that you're speaking of?

A. Lucky Friday Extension.

Q. To be made out to whom?

A. I don't recall who they were made out to, now.

Q. Who was dominating the Lucky Friday Extension Mining Company's affairs at the time you were acting as secretary there?

Mr. Etter: I'm going to object to that question on the ground it invades the prerogative both of the jury and the court, and it calls for a conclusion of the witness as to who was dominating.

The Court: Well, the jury is not bound or con-

(Testimony of Glynn D. Evans.)

trolled by what any witness says, but the jury may hear, for such assistance, if any, as such may be in helping the jury ultimately come to a conclusion after it's heard all the evidence and considered it all. The objection is overruled.

Mr. Etter: Exception.

The Court: Exception noted. You may answer.

A. Will you state that question again, please?

Mr. Stocking: Read the question.

(Whereupon, the reporter read the last previous question.)

A. That's a hard question to answer, isn't it?

Q. Well, I should think you would know; you were working there.

A. Well, I would say that both Mr. Keane and Mr. Allen.

Q. Well, what part did Mr. Allen have in the affairs?

A. Well, I really don't know what part he had. He made several telephone conversations; he would come up there, and him and Mr. Keane I always thought was running it.

Q. You thought both of them were running it?

A. I did. [339]

Mr. Stocking: We'll offer in evidence exhibit 51 and exhibit 52.

Mr. Etter: We'll object on the ground there's no proper foundation laid; it's incompetent, irrelevant and immaterial as it affects any charge laid in the indictment in relation to Mr. Allen; there's no con-

(Testimony of Glynn D. Evans.)

nection shown to the defendant; he's not privy to anything that appears here; it's incompetent, irrelevant and immaterial at this time.

The Court: I am only assuming this, I haven't seen the exhibits nor compared them with the indictment, are any of the letters contained in these exhibits which in the indictment it is charged were mailed?

Mr. Stocking: Yes, your Honor.

The Court: Objection overruled.

Mr. Etter: Exception.

The Court: Is there any question of that, Mr. Etter, of these letters mentioned in the indictment?

Mr. Etter: If there are letters mentioned in the indictment it's a question as to the materiality at a particular place in the proceeding when the proper foundation has been laid, but I don't think it's been laid with this witness, your Honor.

The Court: Well, counsel, there is always a question of when an exhibit is admitted; the court can't keep [340] out all the evidence until it's all in, any more than the court can insist that at an intersection each automobile stand by until the other has passed in front of it, so that to a degree there can be apparently some inconsistency. I'm going to admit these two exhibits. The jury will understand that the fact these two exhibits are admitted does not mean that the Court does or that the Court does not think that they reflect against the defendant. The admission merely means that

(Testimony of Glynn D. Evans.)

the jury will have the right to consider such along with such other exhibits as may be admitted, such as have been admitted, and along with the other evidence. Objections to exhibits 51 and 52 are overruled; exhibits 51 and 52 admitted.

(Whereupon, Plaintiff's Exhibits No. 51 and 52 for identification were admitted in evidence.)

Q. (By Mr. Stocking): Now, with regard to the organization of the Pilot, when did you become ill?

A. About the 27th or 28th day of March, 1946.

Q. And you were rather seriously ill at that time? A. Very serious.

Q. So that you could not perform your functions as an officer or secretary of that company?

A. Yes, sir.

Q. But before you became ill were there any discussions with you with regard to the Pilot organization and the coming [341] offers?

A. It had hardly been worked out at that time, but I remember that I was mentioned as one of the incorporators.

Q. And who was working out the terms of the Pilot organization? Were they worked out there in Mr. Keane's office?

A. I imagine so. I couldn't say where they were worked out.

Q. Weren't you in Mr. Keane's office during the early part of 1946? A. I was.

Q. And was there any activity at that time in

(Testimony of Glynn D. Evans.)

the office with regard to the organization of the Pilot Company?

A. I heard there were several companies going to be organized, and I've forgotten which ones, but Pilot was going to be the next one.

Q. And who was connected with the organization of the Pilot?

A. Well, I thought the two same gentlemen.

Q. Well, who were they?

A. Mr. Keane, and Mr. Allen, and Mr. Grismer. Mr. Stocking: That's all.

Cross-Examination

By Mr. Etter:

Q. Mr. Evans, you stated in your direct testimony that Mr. Keane talked with you about the Lucky Friday Extension before the company was organized? A. You say I did say that?

Q. Yes, as I recollect your direct testimony, you said Mr. [342] Keane talked with you about this company before it was organized, that's the Lucky Friday Extension. A. Yes, sir.

Q. Is that correct, Mr. Evans?

A. I imagine it would have to be correct, if I knew I was going to be a secretary of it, or a director of it.

Q. Of course that would be correct, that Mr. Keane talked to you about it. Now, you also said Allen might have been there in your office one time, but you wouldn't swear to it. That was the exact language you used. You said you wouldn't swear to

(Testimony of Glynn D. Evans.)

it. Isn't it true, as a matter of fact, that Allen was never in the office when you ever had a discussion with Mr. Keane about the Extension, isn't that true?

A. They were in and out so many times I couldn't say. I've talked with Mr. Allen and with Mr. Keane.

Q. That's true, but you didn't talk with Mr. Allen before the organization, at the time of the organization of this company, isn't that so?

A. I don't remember for sure.

Q. You don't remember for sure?

A. That's right.

Q. As a matter of fact, when the government first talked to you about this, isn't it true you told them you didn't remember talking to Mr. Allen?

A. What was that, please?

Q. When government counsel or Mr. Denney, one of these investigators, talked to you, when this case was first being investigated, didn't you tell them that you didn't ever remember talking to Mr. Allen over here?

A. No, I won't say I told them that at all.

Q. What did you tell them about Mr. Allen?

A. I don't remember now what I told them.

Q. And when was the last time you talked to Mr. Denney or Mr. Stocking or the district attorney about Mr. Allen's part in this particular action, Mr. Evans?

A. When was the last time?

(Testimony of Glynn D. Evans.)

Q. Yes, the last time. A. Well——

Q. Maybe I can refresh your recollection; wasn't it in Mr. Keane's office in Wallace a few days ago, before this trial started? A. No, sir.

Q. And how long ago was it, then?

A. Well, I couldn't tell you that, because I don't remember now.

Q. I see. When did you talk with either of these gentlemen here in Spokane since you've come down from Wallace?

A. Well, I was talking with Mr. Stocking at noon today.

Q. And what did he say about this testimony about Allen's [344] participation if any in this case?

A. He didn't mention Mr. Allen.

Q. What did he mention to you?

A. We wasn't talking about that at all.

Q. I see. All right. Now, you made another statement in your examination, Mr. Evans, that you thought that Mr. Keane and Mr. Allen were dominating the corporation. A. I did.

Q. Isn't that right? A. Yes, sir.

Q. But you made the further statement that you didn't know Mr. Allen's part in it?

A. I didn't know what?

Q. You didn't know what part Mr. Allen had in it, you didn't know his part in the organization. You made that statement, I think, to the reporter.

A. I thought that both the gentlemen were working together.

Q. You thought they were? A. Yes, sir.

(Testimony of Glynn D. Evans.)

Q. But you didn't know Mr. Allen's part in it?

A. No, sir. He wasn't named as an officer.

Q. Anything you knew about Mr. Allen's participation was from what somebody told you, isn't that right?

A. No, nobody told me anything about it; they were just together doing it amongst themselves, and then they'd tell [345] us what to do.

Q. Who would tell you what to do?

A. Mr. Keane, or Mr. Allen would call up on the telephone and want something done, and Mrs. Vermillion would tell me to make out so many shares of stock.

Q. That was after the company was organized?

A. Yes, of course it was after the company was organized.

Q. After it was organized and the stock was issued?

A. You don't make out stock before the company is organized.

Q. Of course you don't, I agree with you. That's when Mr. Allen talked to you, after you had your stock printed, after your company was organized, isn't that correct?

A. Well, partly. Some of it is, yes.

Q. Yes, but you say here, your direct testimony is that during the organization of this corporation that you thought Allen might have been there, but your statement was that you wouldn't swear to it?

A. He said that we're going to have a job for you.

(Testimony of Glynn D. Evans.)

Q. Who said that? A. Mr. Allen.

Q. When did he say that to you?

A. I don't remember.

Q. You don't remember? A. No, sir.

Q. Well, do you remember any of the things that Mr. Keane [346] said to you?

A. Well, I happened to be working there, and they said that I was going to work with them, and would it be all right with me, and I said certainly.

Q. In fact, prior to the organization of this company Mr. Keane did all the talking with you about Lucky Friday Extension, isn't that so?

A. Well, I don't recall. I won't say for sure whether it's so or not, whether he did it all or not.

Q. Well, you don't remember much about anything, then, do you, in this organization?

A. Not a great deal.

Q. You wouldn't be willing to sit up there and swear to anything definitely, would you?

A. I'll sit up here and swear to anything I've said. I made out all the stock certificates and mailed them, and I became sick.

Q. And you became secretary, and then became sick? A. Yes, sir.

Q. You'll swear to that? A. Yes, sir.

Q. But beyond that you're not going to swear to anything up here in this case, isn't that right?

A. I think both the gentlemen told me I was going to work for them in this company. [347]

Q. You think they both did. All right, when did Mr. Allen tell you that?

(Testimony of Glynn D. Evans.)

A. Well, it must have been in the time of the organization of the company.

Q. Now, it must have been before the organization, is that right? A. I can't recall it.

Q. Now, you don't know whether you talked to Allen before or after, do you, isn't that so?

A. Well, I knew both of those gentlemen, and they were in there——

Q. Well, you know me, too, don't you, Mr. Evans? A. Yes.

Q. Well, was I there on any of these transactions? A. No, sir.

Q. All right. Do you remember now definitely whether Mr. Allen was there during the pre-organization of this company?

A. No, I don't know.

Q. You don't. After the company was organized did you talk with Mr. Allen over the 'phone?

A. No, sir.

Q. You never talked with Mr. Allen over the 'phone? A. No, sir.

Mr. Etter: That's all. [348]

Mr. Stocking: No further examination.

(Whereupon, there being no further questions, the witness was excused.)

Mr. Stocking: Call Mr. Grismer. I might advise the Court Mr. Hawkins is also here, Mr. Grismer's attorney.

The Court: Yes, all right.

Mr. Stocking: I wanted the record to show that.

The Court: The record will show that Mr. Haw-

kins, attorney for Mr. Grismer, is in the courtroom. Is that correct, Mr. Hawkins?

Mr. Hawkins: Correct. I don't know what significance it has.

* * *

Mr. Stocking: With the Court's permission I would like to recall Mr. Evans. I completely overlooked having [349] him identify these stock stubs. They are going to be necessary as foundation evidence for tracing stock certificates, for Mr. Denney's schedules, and I want to have these exhibits identified.

The Court: All right, Mr. Evans may re-take the stand. He's already been sworn.

GLYNN D. EVANS

recalled as a witness on behalf of the plaintiff, resumed the stand and testified further as follows:

Mr. Stocking: I'm having marked Lucky Friday Extension Company stock stubs from 1 through 2743. These are contained in eleven volumes, and excludes from the last volume 2744 to 2750 inclusive.

(Whereupon, stock certificate stubs of Lucky Friday Extension Company were marked Plaintiff's Exhibits No. 53 to 63 inclusive for identification.)

The Court: Eleven volumes of stock certificate stubs, is that correct?

Mr. Stocking: That's correct.

The Court: Excluding what, Mr. Stocking?

(Testimony of Glynn D. Evans.)

Mr. Stocking: Excluding in the last volume the stubs for certificates 2744 through the end, which is 2750, inclusive. [350]

Direct Examination

By Mr. Stocking:

Q. Now, can you identify these exhibits just referred to, Mr. Evans? A. Yes, sir.

Q. And these were prepared by whom?

A. By myself.

Q. As secretary of Lucky Friday Extension Company? A. Yes.

The Court: They were prepared by whom?

A. I prepared them.

Q. And the last certificate, 2743, is dated April 12, 1946? A. Yes, April 12.

Q. And that was the last stub which was prepared by you, is that correct, from your examination?

A. From the time that I was sick, and then I came back and possibly wrote a few more.

Q. Oh, you did come back later on?

A. Sometime in October, after I got my glasses, I believe, but not very many of them.

Q. In October, 1946, you did write some more?

A. Yes, sir, either October or September.

Mr. Stocking: We have three additional records that will cover that time in the fall. Certificates 3001 to 3250 will be Plaintiff's 64.

(Whereupon, stock certificate [351] stubs of Lucky Friday Extension were marked Plaintiff's Exhibit No. 64 for identification.)

(Testimony of Glynn D. Evans.)

Mr. Stocking: Certificate stubs 3251 to 3500 will be Plaintiff's 65.

(Whereupon, stock certificate stubs of Lucky Friday Extension were marked Plaintiff's Exhibit No. 65 for identification.)

Mr. Stocking: And certificate stubs 3501 to 3750, that book will be marked 66.

(Whereupon, stock certificate stubs of Lucky Friday Extension were marked Plaintiff's Exhibit No. 66 for identification.)

Q. (By Mr. Stocking): Now, you have examined these last three exhibits, have you, Mr. Evans?

A. Yes, sir.

Q. And Exhibit number 64 you prepared beginning with certificate number 3187 and ending—

The Court: Beginning when?

Q. Certificate number 3187, on October 3—just a minute—beginning with certificate number 3195, to certificate stub 3250 inclusive, certificate 3195 being dated October 4, 1946, and you prepared all of the stub book marked Exhibit 65, is that correct?

A. It would appear that way.

Q. And in exhibit number 66, from certificate 3501 through [352] 3507, which is dated December 12, 1946?

A. Yes, sir.

Q. Is that about the time that the records went out of your possession?

A. That's right.

Mr. Stocking: At this time we'll offer in evidence—

The Court: I don't like to be captious, Mr.

(Testimony of Glynn D. Evans.)

Stocking, but it's been very difficult for me to know with respect to these stub books when you were testifying and when Mr. Evans was testifying.

Mr. Stocking: I think it was probably because I was attempting to hurry it up.

The Court: I think you'd better ask him what he knows about those books; ask him whether he prepared them or not, instead of telling him.

Q. (By Mr. Stocking): Did you or did you not prepare the stub certificate books to which we have just referred, excluding those which we indicated in certain of those books?

A. I prepared those.

Mr. Stocking: We'll offer these as exhibits, offering those portions of certain books which he has identified as having been prepared by him.

The Court: Well, counsel—is there an objection? [353]

Mr. Etter: Yes, there's an objection.

The Court: All you say is that he prepared some stubs. There's nothing further shown.

Mr. Stocking: Well, he said he did this in the course of his authority as secretary to the company.

The Court: Well, suppose all he did was prepare some stubs and let it go at that. Would I be interested in it?

Q. Well, you've already testified that you had issued the stock certificates?

A. Any one of those stubs that I've written up, the certificate has gone out to the broker or to the individual person that sent in the corresponding certificate, in the order that they were issued.

(Testimony of Glynn D. Evans.)

Q. And you prepared that certificate, you say?

A. Yes, sir. Most of that writing in there is mine.

Q. And made the notations on the stubs at the time the original certificates were issued?

A. Absolutely.

The Court: Exhibits 53 to 66 inclusive are offered. There's an objection. I am assuming that there is much of those exhibits that will be of no great help to us in this case.

Mr. Stocking: That's correct, your Honor; they're merely offered as records of the corporation for the purpose [354] of—

The Court: Ruling reserved.

Mr. Stocking: That's all at this time, Mr. Evans.

The Court: Just a moment; is there any cross-examination of Mr. Evans on this further examination?

Mr. Etter: No, your Honor.

(Whereupon, there being no further questions, the witness was excused.)

JOSEPH V. GRISMER

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Stocking:

Q. Will you state your name, please?

A. J. V. Grismer.

Q. Are you the Joseph Valentine Grismer who

(Testimony of Joseph V. Grismer.)

is one of the defendants in this case? A. Yes.

Q. Where do you reside, Mr. Grismer? [355]

* * *

Q. Mr. Grismer, in view of what has transpired, will you state to the Court and jury whether there has ever been any discussion between you and myself or Mr. Erickson with regard to your testifying, as to whether any promises have been made to you, or commitments, or anything of that sort?

A. There have none been made.

Q. There have been none made? A. No.

Q. How long have you lived in Wallace?

A. Approximately 33 years.

Q. And what has been your business during that time, your [360] occupation?

A. Prospecting and mining.

Q. And what are some of the names of the mining companies that you've worked for in the past several years?

A. The Hecla Mining Company, the Polaris Mining Company; I used to work for the Federal and for the Day mines.

Q. What type of work were you doing, what positions were you holding?

A. My last position—and also for the Callahan Consolidated—my last position was the superintendent of the Callahan Consolidated.

Q. And you've held superintendent's positions in some of those other companies too, have you not?

A. I was foreman and shift boss, and so on, and miner.

(Testimony of Joseph V. Grismer.)

Q. I meant supervisory positions.

A. Supervisory capacity, yes.

Q. You know the defendant Allen here, and the defendant Clayton Keane? A. I do.

Q. And how long have you known these other defendants?

A. I first met Mr. Allen I think it was in '38, 1938.

Q. How about Clayton Keane?

A. I've known Clayton Keane more or less for at least twenty years.

Q. Now, you're familiar with both the Lucky Friday Extension [361] Mining Company and the Pilot Silver Lead Mines, Inc., is that right?

A. I didn't get the first.

Q. The Lucky Friday Extension Mining Company and the Pilot Silver Lead Mines, Inc., are you familiar with those companies? A. Yes.

Q. You were an officer of the Extension Company, were you not? A. I was.

Q. Were you also one of the incorporators?

A. I believe so.

Q. Can you tell us what events led up to the formation of the Lucky Friday Extension Mining Company, what if any conversations took place, and who participated in the plans for the formation of that company?

A. It first started in what is known as Pat's Bar.

Q. Is that a location in Wallace?

A. It is a location in Wallace, a restaurant and bar. There were a group of us in there having a

(Testimony of Joseph V. Grismer.)

sociable drink, and in this group was Mr. Sekulic of Mullan——

Q. Of the Big Friday?

A. Of the Big Friday; Mr. Keane, Mr. Allen, myself, and there were a few soldiers in there, and numerous other people. [362]

Q. Were the soldiers, you say, were they participating in your conversation, or were they just in the bar? A. They were just in the bar.

Q. But the people you mentioned before, they were participating in a conversation?

A. More of a group, yes.

Q. And what was said there, if anything?

A. Mr. Sekulic made the statement that there is a piece of ground west of the Lucky Friday——

Q. That's the Big Friday?

A. The Big Friday, which ought to be developed, or words to that effect, and I have known of this ground for the past 25 years and thought well of it. It has great possibilities as a mine, and I then took Mr. Allen aside and told him my opinion of this particular ground, and said it really should be developed. We talked it over for a few more minutes, and there were no more done that night. At this time I was still superintendent, or still am, I mean superintendent of the Callahan Consolidated. The next day I went to work early, worked all day, it was during the war, and about toward evening, 4 o'clock, presumably, I had my work done and the office work done, and I went down into the Metals Bar.

(Testimony of Joseph V. Grismer.)

Q. That's another loaction in Wallace?

A. That's another location, in the Samuels Hotel, and there [363] was a group there making merry and drinking a bit, and in that group was Mr. Keane and Mr. Allen, and as I came in, Mr. Allen then took me aside and said that they had decided to develop that piece of ground, or to promote a company on it, words to that effect which I can't quite recall, and that they had agreed that they would develop it through the Lucky Friday.

Q. Develop it through the Big Friday?

A. Through the Big Friday, using their shaft, which was quite an advantage, and they had agreed to organize a company, and he said that "We will take care of that" meaning Mr. Keane and himself.

Q. Mr. Allen said that?

A. Yes, meaning that Mr. Keane—well, I presumed he meant himself, when he said, "We would take care of all details," and that "we want you to be president of the company; there will be no work connected, we'll take care of all details."

Q. Did he indicate what the name of the company was going to be?

A. I don't know whether he said so right at that time or the following day, but I was later informed it was to be the Lucky Friday Extension; I think it was right at that time.

Q. Do you happen to know who selected the name of the company? A. No, I don't. [364]

Q. You were informed by whom that that was the name?

(Testimony of Joseph V. Grismer.)

A. I was informed by Mr. Allen that that would be the name of it.

Q. Now, what other events led up to the formation of this Lucky Friday Extension?

A. Well, I was very glad to see that the property would be developed. As I stated, I am but a miner and a prospector, and I know that it is a mighty good piece of ground, and I wanted to see it developed, and it pleased me, and I entered wholeheartedly into this scheme where I was to head the company and take care of the development work, and they, as I said before, were to take care of all other details.

Q. By working toward the development of it, you meant the actual mining operation was going to be under your charge, is that right?

A. Yes, all mining operations were to be under my direction, subject to the engineers, of course.

Q. Now, what was done with regard to acquiring the properties for the company, if you know?

A. I thought at the time that Mr. Sekulic had owned the property. After a few days it was brought to my attention that he did not own the property, and Mr. Allen told me that Mr. Lakes was to come in and that he and I would locate the property in my name. [365]

Q. Now, is that Arthur Lakes, the mining engineer here in Spokane?

A. Yes, and geologist.

Q. And geologist?

(Testimony of Joseph V. Grismer.)

A. Yes, and Mr. Lakes then came in, and I made arrangements to be off from the mine long enough to, with Mr. Lakes' help, we located six claims in my name.

Q. And those were adjoining the property of the Big Friday, is that right?

A. That was adjoining the Big Friday, is that right?

A. That was adjoining the Big Friday.

Q. Were these all of the claims that went into the Extension then, or were there some other claims?

A. Well, there was just those six that went in at that time.

Q. Now, were there any other negotiations with the Big Friday with respect to the use of their shaft?

A. All these negotiations were made in my absence. I was not present when any deals was made with the Lucky Friday, with the Big Friday, as you call it.

Q. Did either Mr. Keane or Mr. Allen keep you informed of those negotiations?

A. I was slightly informed as to what was going on, but I didn't know any details until the contract was brought to me.

Q. Brought to you for your signature as president of the company? [366]

A. It was.

Q. And who brought it to you, if you recall?

A. I can't recall. It was given to me, and I read it first.

(Testimony of Joseph V. Grismer.)

Q. Now, with regard to the stock which was issued in that company, do you recall the situation as to what the plan was for issuing the stock for the properties?

A. I was told that all of the stock would be issued to me for the property, and that I would then turn the stock back to the corporation, after endorsing all the certificates, which I did.

Q. And who told you that?

A. Mr. Allen.

Q. And you endorsed back to the company, then, a substantial portion of the stock which had been issued, is that correct?

A. I endorsed all the certificates that were brought to me.

Q. And after that was done, did there still remain a large portion of a block of stock in your name?

A. I was never permitted or had the opportunity of examining the books or anything of any kind, and therefore I wouldn't know what took place; I never could get any information.

Q. Did you see the company's prospectus at the time it was put out? A. Yes. [367]

Q. That did refer to a large block of stock being outstanding in your name, did it not?

A. According to the prospectus it was, yes.

Q. But it never came into your actual possession, is that correct?

A. Never was in my possession.

(Testimony of Joseph V. Grismer.)

Q. Did you exercise domination and control over that block of stock—— A. No.

Q. ——or did someone else?

A. Somebody else did; I never did.

Q. And who was the other person who did that?

A. I wouldn't know.

Q. You don't know who did that? A. No.

Q. Now, what part if any did you take in the preparation of the company's prospectus for Extension prior to this first public offering of stock along about July, 1945?

A. My participations were very limited. I remember going out with Mr. Tabor to take pictures of the properties, and also a gentleman from Spokane, I don't recall his name.

Q. He was a photographer?

A. A photographer.

Q. And who was the company's attorney?

A. Mr. Keane was supposed to be the company's attorney. [368]

Q. And did they have a Spokane attorney too?

A. Mr. Johnston was also participating in the organizing of the company and working up of the prospectus.

Q. He participated more in connection with the prospectus, did he not? A. That's right.

Q. And he's Elmer Johnston of Spokane?

A. That's right.

Q. Did you have any conferences with him regarding the prospectus or what should go into the prospectus, in the Extension prospectus?

(Testimony of Joseph V. Grismer.)

A. I don't think I ever had any conferences with him as to what went into the prospectus.

Q. Did you ever visit his office in connection with Extension at all, that you recall?

A. I don't believe I did regarding the Extension, but I did regarding the Pilot.

Q. Yes; well, I'll come to that a little later. Now, with regard to Extension, did you have any part in the handling of the funds which came from the brokers? A. None whatsoever.

Q. Did you have any part in the writing of the checks of the Extension Company? A. No.

Q. Did you have anything to do with the company's financial [369] affairs?

A. None whatsoever.

Q. You were president of the company?

A. Yes.

Q. And who directed that you should not have anything to do with these affairs?

A. I was told that Mr. Keane would be the company's attorney and take care of all the financial affairs of the company.

Q. And who told you that? A. Mr. Allen.

Q. And you understood, as you have previously testified, your part was to develop these properties, is that correct? A. I didn't quite get that.

Q. Your part was to develop the properties?

A. I was to direct the mining, yes.

Q. Now, after the money was received from the brokers did you begin some mining operations under the contract with the Big Friday?

(Testimony of Joseph V. Grismer.)

A. There was a contract let with the Big Friday to do the work.

Q. Under whose supervision?

A. Under mine, mostly, and also Mr. Lakes'.

Q. And could you just describe very briefly what was done, and where it was done? [370]

A. There was a great deal of, oh, you might say rehabilitating the Big Friday, such as driving a raise to the surface, laying heavy rails in the main haulage, and connecting the different levels for ventilation purposes, which was very necessary.

Q. That was all necessary for the sinking of the shaft?

A. It was a great aid to it, yes, and then we sank the shaft 400 feet.

Q. From the thousand foot level you went down to the 1400 foot level, is that correct?

A. That's right.

Q. Then describe just briefly what operations were carried on at that level.

A. Then there was a cross cut driven to the vein southerly, and while they were doing that I undertook to explore for a vein northerly; I drove two hundred and some feet across up there, and then we started drifting west on the Extension vein, northwest, kind of; the exact footage I can't recall. It was approximately 500 or close to 600 feet of drifting.

Q. And during what period was this work accomplished, approximately what months?

(Testimony of Joseph V. Grismer.)

A. Oh, it started approximately the fall of '45 and through '46 into '47, or about the first of '47 it stopped.

Q. There was some operations being carried on during that [371] period from time to time, or at all times? A. All the time.

Q. At all times?

A. Yes; nearly all the time, anyway.

Q. And approximately how much money was actually expended on these mining operations?

A. As close as I can recall it was between seventy-five and about eighty-five thousand dollars.

Q. That was paid to the Big Friday under the contract?

A. That was done under the contract, by the Lucky Friday.

Q. Yes. Now, you were also president of the corporation in January, 1946, when they made the second offering of stock, were you not?

A. Yes, sir.

Q. And they had increased the price from—what was the initial price, do you remember?

A. Twelve and a half cents.

Q. Twelve and a half cents, and the company to net what?

A. The company was to net ten cents.

Q. And do you recall the price of the second offering?

A. I believe it was thirty cents or thirty-five, I don't recall.

(Testimony of Joseph V. Grismer.)

Q. It was in that neighborhood; the price had gone up during the fall of '46?

A. That's right. [372]

Q. Did you have anything to do with the finance, the handling of the monies that came in at that time?

A. None whatsoever.

Q. The same arrangement still prevailed?

A. Yes, it did.

Q. Now, going from the Extension for a moment to the Pilot, can you give us the background of the arrangements which were made for the organization of the Pilot Silver Lead Mines, Inc.? Who participated in those arrangements?

A. Well, my partners and I owned the Pilot for approximately twenty-five years.

Q. Who are they, Mr. Grismer?

A. My brother George; E. L. Gadau of Spokane, and William Walker, I think of Opportunity or Otis Orchards.

Q. You and these other gentlemen had owned these properties——

A. Yes.

Q. ——for twenty five years?

A. Approximately that; since 1924, anyway.

Q. That is one portion of what eventually became the Pilot?

A. We owned the eight claims, patented now, and we held on for a good many years, there was a great deal of work done, and a mighty good showing. When this war came along my partners decided that it was time that we organized and

(Testimony of Joseph V. Grismer.)

developed the ground, and I was talking about organizing the Pilot Company and so forth, and I talked it over [373] with Mr. Allen, and he then made the statement that it would take us a great deal of time and money to organize and raise the money to do the work, while he says "We can do it in a few weeks."

Q. About when did these conversations take place, I mean just the approximate month and year?

A. About '46.

Q. The early part?

A. Early part of '46.

Q. I see.

A. And he said it would not take us no time to raise the money for the work, and I agreed with him, and over the objections of my partners, why, I let him go ahead.

Q. Did he talk to your partners at that time about it?

A. I talked to my partners, yes.

Q. You did, but he did not, is that right?

A. I don't think so.

Q. And what was the next arrangement that was made in regard to the formation of the Pilot Company?

A. It was to be on the same scale and plan and the same organization that took the Extension, meaning Mr. Keane and I presume Mr. Allen was to participate all the way through like they had in the Extension. We organized the Pilot Mining Company, and——

(Testimony of Joseph V. Grismer.)

Q. What was your position to be in the Pilot?

A. I believe I was one of the promoters, in fact I know I was, or the organizers to get the company going and get the different properties together.

Q. One of the incorporators?

A. I believe I was one of the incorporators; I don't quite recall.

Q. And what would your official position be, if any?

A. After we were organized, everything going good, I was informed that Mr. Keane would be the president, Irene Vermillion vice president and director, and Mr. Evans a director.

Q. And secretary? A. And what?

Q. And secretary, wasn't he?

A. And secretary, yes.

Q. Weren't you given an official title or position?

A. Well, I was supposed to look after the operations of the ground, the work in the mine.

Q. You were the manager, were you not?

A. Mine manager.

Q. Mine manager; and was there any discussion about—of course, you weren't an officer of this company, so was there any discussion with you as to how the finances would be handled when the money was raised?

A. That was entirely out of my hands. [375]

Q. Now, some other properties were put into the Pilot besides you and your partners' properties,

(Testimony of Joseph V. Grismer.)

were they not? A. Yes, several of them.

Q. And who put those properties in?

A. Take them individually?

Q. Yes.

A. To start with, the Cincinnati group.

Q. And that's——

A. I told Mr. Allen that that would be a desirable group to have in there to make a good compact group of mining claims.

Q. Did they lay next to the properties that you were putting in? A. They adjoined it.

Q. Yes.

A. And Mr. Allen told me to see Mr. Herrick.

Q. Herrick was the man who was the head of the Cincinnati group? A. He was.

Q. And you went there at Allen's direction?

A. Yes.

Q. And who made the negotiations as to what arrangements were made with Mr. Herrick?

A. I started all the negotiations with Mr. Herrick. He was somewhat reluctant to go in, as he had another deal on [376] with some other people, but I kind of talked him out of it, and convinced him that he'd have quicker action with the Pilot, sincerely I thought so, and after he more or less agreed that he would talk business, I turned him over to Mr. Allen.

Q. Whatever final arrangements were made were not made by you? A. No.

Q. They were made by Mr. Allen?

(Testimony of Joseph V. Grismer.)

A. I don't know whether it was Mr. Keane or Mr. Allen.

Q. I see. Now, were there some other properties involved?

A. There was the—I can't recall that——

Q. Do you know Mrs. Emeline Phelan?

A. Mrs. Phelan, yes, the Phelan Group, they call it. I went to see her too, and started negotiations, and reached an agreement, and turned her over to Mr. Allen.

Q. Did you introduce her to Mr. Allen?

A. I did.

Q. And who finally made whatever negotiations were made as to the deal?

A. I presume that it was Keane and Allen; I just presume so, I don't know.

Q. And who, if anyone, asked you to go see Mrs. Phelan?

A. I talked it over with Mr. Allen.

Q. Now, was there a large block of stock issued to you in [377] connection with the Pilot Company?

A. I was to get 900,000 shares to be divided among my partners for the property.

Q. Did you—was all that stock actually issued to you? A. I don't quite understand.

Q. Was that stock actually issued to you, all of that stock? A. That 900,000?

Q. Yes.

A. Later on, after while, it was, yes, after about a year.

(Testimony of Joseph V. Grismer.)

Q. And did you get the benefit of that stock? Do you own that stock now?

A. I divided it up with my partners, and I told them at the time that in view of the fact that I've owned the property before I ever knew most of them, done a great deal of work, and took them in, and that there might be some more stock needed to perhaps develop another property or so, that I was going to keep the lion's share for the time being, which I did.

Q. Do you recall how that was divided?

A. Two of them each got 125,000 shares, and one got 175,000.

Q. And how much did that leave you?

A. That left me 475,000 shares. I figured actually that I was to get 175,000 for my portion of the property, the same as the others, and that in time I would divide some of the other with them again. That left 300,000 shares. [378]

Q. You'd divide some of it with whom?

A. With the partners.

Q. Oh, with your other partners?

A. Yes.

Q. If it wasn't necessary to acquire an additional piece of property?

A. Anything that wouldn't be necessary to be used in helping the company along, maybe perhaps have to buy some more property, and the stock would be there.

Q. What finally happened to the stock you

(Testimony of Joseph V. Grismer.)

divided up among the partners? Did they retain that stock?

A. I had it in a safe—not a safe, I mean in my filing cabinet in the office, and it disappeared from there.

Q. That stock was taken without your permission, is that correct?

A. Without my knowledge or consent.

Q. Had you endorsed the certificates?

A. It was so arranged that all stock was endorsed.

Q. Now, you're referring to which block of stock? Are you referring to the stock that was to be your stock, or the stock that was to go to your partners?

A. All this stock was brought to me, all these certificates—and it was insisted that I endorse them all before they went into escrow.

Q. Who insisted that you endorse them? [379]

A. Mr. Allen.

Q. And is it my understanding now that the stock which you had issued—which you had secured for your partners, that that was the stock that disappeared?

A. That's the 300,000, that disappeared.

Q. Now, what about the 450,000 that was issued in your name, I mean that was to be your share?

A. That was part of it.

Q. Has that all disappeared?

(Testimony of Joseph V. Grismer.)

A. I loaned Mr. Allen 100,000 shares, and 300,000 disappeared, leaving me 75,000.

Q. You still had 75,000 shares?

A. No, I haven't got all of that now.

Q. I mean you had the use of 75,000 shares?

A. I did.

Q. But the rest of the stock disappeared; do you know where it went to?

A. I've been informed that it was taken out and put into this trustee account, the 300,000.

Q. Well, did you ever have any discussion about that stock with either Mr. Keane or Mr. Allen?

A. No.

Q. About its disappearance?

A. No use. You couldn't discuss anything with it; it was gone. I let them know what I thought of it, but that was [380] all.

Q. Now, in connection with the Pilot, I think you mentioned previously that you had at one time visited Elmer Johnston's office, was that your testimony?

A. Yes, I did visit Elmer Johnston's office regarding the prospectus of the Pilot.

Q. Who if anyone accompanied you there?

A. I am quite sure that Mr. Allen was with me.

Q. Do you have any recollection of any incidents that were discussed there at that time?

A. It was mostly the history of the company, of the ground, and its—well, its titles and so on.

Q. And you were able to furnish some of that information?

A. Yes, I did.

(Testimony of Joseph V. Grismer.)

Q. Was there any other incident that refreshes your recollection of the visit to Mr. Johnston's office? A. No, I don't.

Q. Was there something said about having your picture in the prospectus?

A. Oh, yes, that was in there, but it didn't so happen.

Q. You didn't want your picture?

A. I didn't want my picture in it, no.

Q. Now, did you bring with you an agreement that you once mentioned to me, Mr. Grismer, an agreement with Mr. Allen that you once mentioned to me, did you bring that with you? [381]

A. Well, what agreement have you reference to in particular?

Q. Well, this was some agreement that you mentioned with regard to certain stock.

A. Yes.

Q. Have you it with you? A. Yes, sir.

(Whereupon, agreement between Grismer and Allen was marked Plaintiff's Exhibit No. 67 for identification, dated 9/1/45.)

(Whereupon, agreement between Grismer and Allen was marked Plaintiff's Exhibit No. 67-a for identification, dated 8/1/46.)

Q. I'll hand you these agreements, which have now been marked for identification 67 and 67-a, and ask you if you can identify those, Mr. Grismer?

A. Yes, sir.

(Testimony of Joseph V. Grismer.)

Q. Whose signature appears on those agreements? A. Mr. Allen's and mine.

Q. And on both agreements?

A. On both agreements.

Q. And what is the date which appears on those agreements?

A. One of them is September 1, 1945, and the other one August 1, 1946.

Q. Was that the date that those agreements were actually executed? A. No. [382]

Q. What date was these agreements executed on?

A. These were typed and executed in the early part of 1948.

Q. And where were they typed and executed?

A. Mr. Allen's office.

Q. What were the circumstances which led up to the executing of these agreements at that time?

A. I was in Mr. Allen's office, and we were talking things over in general, and he said "You know" he said "we made agreements, verbal agreements, whereby we could borrow stock from each other, and so on." I said "That's right"; we entered into an agreement where I could borrow from him if I needed any, which I never did, and he could borrow from me, and I says "That is correct" and he says "There is no reason, then, why we can't put that in writing"; and I says "I can't see no reason why we can't put it in writing"; and that agreement was entered into at the time the Lucky Friday Extension Mining Company was incorporated.

(Testimony of Joseph V. Grismer.)

Q. You mean your verbal agreement?

A. Verbal agreement, yes.

Q. That was an agreement and understanding between you as to the use of each other's stock, loaning stock from one to the other?

A. That's right, and when these agreements were handed me there were four of them, I noticed——

Q. Speak up, Mr. Grismer. [383]

A. ——there were four sheets, and I read the one, the top one, which was dated September 1, 1945, relative to the exchange of stock of the Lucky Friday Extension. I turned it over and read the other one, and it was the same, and I just glanced at the others, and they all looked alike, I took for granted they were all four the same, and I'm so used to signing things in triplicate and so forth I never paid any attention there was more than one, figured, well, a man typing will make three or four duplicates at one time, so after reading the first two and seeing they were all alike, I signed them all. It was in the early part of this year, in going over them, I discovered that one of them was relating to the Pilot, which was not my intention.

Q. Now, this pencilled notation appears at the top of each agreement, exhibit 67 and 67-a, "1948"; who put that on?

A. I put that on; I put it on myself.

Q. That was so that you would recall when the agreements were actually entered into?

A. That's right.

(Testimony of Joseph V. Grismer.)

Mr. Stocking: We'll offer 67 and 67-a in evidence at this time.

Mr. Etter: No objection.

The Court: Exhibits 67 and 67-a are offered, no objection, they're admitted.

(Whereupon, Plaintiff's Exhibits No. 67 and 67-a for identification [384] were admitted in evidence.)

(Whereupon, Mr. Stocking read Plaintiff's Exhibits 67 and 67-a to the jury.)

Q. Now, Mr. Grismer, did you get the stocks that are mentioned in these agreements?

A. I got some stock in all of them.

Q. In all of these companies? A. Yes.

Q. Do you recall when you got that stock?

A. No, I don't. It came at various times.

Q. And who did it come from?

A. Mr. Allen.

Q. Was any of that stock that you got from Mr. Allen turned over to your partners? A. No.

Q. They didn't get any of this stock?

A. No.

Q. Did they get any stock which came from Mr. Allen? A. They got some, yes.

Q. Do you recall what company that was in?

A. I know they have some, all of them have some in Coeur d'Alene Consolidated.

Q. Alma?

A. And some in Alma, and I think in Hunter Silver.

(Testimony of Joseph V. Grismer.)

Q. And who made that arrangement with them?

A. Mr. Allen; that is, I made them for Mr. Allen.

Q. You made the arrangements with your partners for Mr. Allen? A. For Mr. Allen.

Q. Well, was that the reason that the stock in either Extension or Pilot—or the Pilot, the stock in the Pilot, was turned over to—I mean went out of your possession?

A. Oh, no, none of that. That was their private stock.

Q. What consideration was there for the giving of this stock to your partners of the Consolidated, and the Alma stock?

A. They were to get \$500.00 apiece, and to give up I think it was 25,000 shares, and one of them gave up 50,000, I think, of Pilot in exchange for this stock and \$500.00, of course.

Q. And the Pilot stock then went to Mr. Allen?

A. It wasn't my intention at the time, but later on it did go.

Q. What was your intention at the time?

A. At that time the treasury was mighty short, and in a conversation I was under—I don't know whether it was my misunderstanding, and I think it was, but I thought the stock was to go back into the treasury, and that's why I made the deal with my partners, to get stock back into the treasury.

Q. To use it for the benefit of the corporation?

A. For the benefit of the corporation, yes, that

(Testimony of Joseph V. Grismer.)

was my idea, and I informed my partners so. [386]

Q. Now, going back to the Pilot and the public offering of that, it was made approximately when, do you recall?

A. In 1946, I think June, 1946.

Q. The first part of June it was completed, was it not?

A. I believe so.

Q. And do you recall how much that netted your company, the Pilot Company?

A. It was supposed to net the Pilot \$100,000, but \$5,000 of this was to go toward the payment of the Cincinnati group, part payment.

Q. Yes, that was mentioned in the prospectus.

A. Yes, that was mentioned in the prospectus.

Q. And when did you start any operations, mining operations, on the Pilot?

A. In August, 1946.

Q. And who was in charge of those operations?

A. I was.

Q. What did you do?

A. We cleaned out the tunnel and rented a compressor, and bought machines and different supplies, and ran about almost 200 feet of drift.

The Court: Did you say this started in September, 1946?

A. August, 1946.

Q. And how long, or during what months, were those operations [387] carried on?

A. About half of August, September, October, November, and part of December.

Q. And why did the work cease in December of 1946?

(Testimony of Joseph V. Grismer.)

A. The bills weren't being paid, and I tried hard to get things straightened up, and couldn't get nowhere, so I just shut down.

Q. They ran out of money?

A. Money, yes.

Q. How much money did you estimate had actually been expended by you on your mining operations?

A. In the neighborhood of \$10,000.

Q. It did not exceed that sum very much, if any?

A. Not very much, no.

Q. Did you have any discussions then with Mr. Keane and Mr. Allen about what had happened to the money?

A. I had quite a few discussions with Mr. Keane, because he was the one who was handling the money.

Q. And did he make any explanations to you?

A. I never could get any explanations; it was always a run-around.

Q. And did Mr. Allen—did you have any discussions with him about what had happened to the money?

A. Yes, I would advise with him and talk things over, and he seemed to be at a loss as to why the bills weren't [388] being paid.

Q. And he made no other explanation about what had happened to the money?

A. No.

Q. I did want to bring out, Mr. Grismer, what has your education consisted of, what schooling have you had?

(Testimony of Joseph V. Grismer.)

A. I went through the eighth grade.

Q. And how long ago was that?

A. Oh, about 1912 or 1913 I finished school, quit school, rather.

Q. And you've worked around in the mining communities since that time?

A. I started out as a logger in Minnesota first, and then drifted west and went into mining, been in it ever since.

Q. You're married? A. I am.

Q. Have any children? A. Two boys.

Q. How old are they?

A. The oldest will be 22 next July; the youngest was 18 yesterday.

Q. I'll show you what has been marked for identification Plaintiff's Exhibit 50, the group of Lucky Friday Extension Mining Company certificates. You were president of Extension, and will you examine these certificates and [389] state whether or not the "J. V. Grismer, President" is your signature on all of these certificates, that appears on the lower right hand corner, with the exception, I believe, of the last certificate, 4505?

A. I'm confident they're all my signatures; as far as I've seen all of these, I'm quite sure they would be.

Q. And whose signature appears on certificate 4505?

A. James A. Allen as president, William Mullen as secretary.

(Testimony of Joseph V. Grismer.)

Q. Were you also an officer of the corporation at that time, the date of that certificate, October 9, 1947?

A. Yes, I was a director.

Q. Were you vice president?

A. I believe so, yes.

Mr. Stocking: I don't believe I've offered this batch of certificates in evidence, and I would like to do so at this time, make an offer of Exhibit 50. These are a portion of the Lucky Friday Extension Mining Company cancelled certificates.

Mr. Etter: I'll object to the introduction of the exhibit at this time on the usual and oft-repeated grounds.

The Court: All right, you may refer to the objections you've made previously.

Mr. Etter: The previous objections, your Honor.

The Court: I'm going to reserve ruling as to this group of certificates. I'm not at all satisfied that all [390] of them are material or admissible.

Q. (By Mr. Stocking): I'll hand you from Exhibit 29, certificates running from 1507 through 1702, but not inclusive——

The Court: What exhibit is this?

Q. This is from Exhibit 29; and ask you if you can identify the—these are of the Pilot Silver Lead Mines, Inc., and ask you if you can identify the——

The Court: Which one?

Q. Pilot, the first numbered certificates being 1507, 1511, 1512, 1532, '34, '37, 1548 and '49; can you identify the signature which appears on there as president of the Pilot?

(Testimony of Joseph V. Grismer.)

A. Well, I wouldn't qualify as a handwriting expert——

Q. Do you know that signature?

A. ——but I offhand would certainly say it was Mr. Allen's signature.

Q. Well, you were an officer of the company at that time, August 13, 1947, and through September 8, 1947, the period over which these certificates were issued, these particular ones?

A. I'm sure I was an officer, yes.

Q. You were vice president and a director?

A. Yes.

Q. Now, with regard to the certificates of the Pilot from 1552 through 1702, of these cancelled certificates which [391] are part of Exhibit 29, I'll ask you if that is your signature which appears as vice president on these certificates?

The Court: What certificate numbers are these?

Q. (By Mr. Stocking): 1552 through 1702, but not inclusive. They're numbered consecutively, but of course these are just the cancelled certificates. Does that appear to be your signature?

A. Yes, that appears—in fact, I'm confident it is.

Q. Now, referring to Plaintiff's proposed Exhibit number 39 which was identified as an escrow agreement in which the Coeur d'Alene Mines Corporation and the Coeur d'Alene Consolidated Silver-Lead Mines, Inc., had entered, can you identify your signature, the signature "J. V. Grismer" as secretary of that corporation? A. Yes.

(Testimony of Joseph V. Grismer.)

Q. And can you identify the signature of the president of the Coeur d'Alene Consolidated Silver-Lead Mines, Inc.?

A. Yes, I saw him sign it.

Q. And who was that?

A. Mr. Allen.

Q. J. A. Allen. Was that signed——

The Court: As president?

Q. As president of the Coeur d'Alene Consolidated Silver-Lead Mines, Inc. Now, was that signed on the date indicated [392] here, May 23, 1946?

A. I couldn't testify as to the exact date. If that's the date on there, it no doubt is.

Q. Was that signed on the same date that this cashier's check was issued, would that refresh your recollection?

A. I don't know; I had nothing to do with the issuing of the check.

Q. You had nothing to do with the committing of the money or the issuance of the check?

A. No.

Q. Who requested you to sign this agreement?

A. Mr. Allen.

Q. You knew that they were raising \$25,000 so they could enter into this escrow agreement with the Coeur d'Alene Consolidated?

A. Yes, I had an idea of it.

Q. Had you discussed that with Mr. Allen and Mr. Keane?

A. No.

Q. Not the raising of the money?

A. No.

Q. You knew what it was being raised for?

A. I knew we had to put down an amount, similar to a guarantee.

(Testimony of Joseph V. Grismer.)

Q. And that was for what purpose?

A. For entering into an agreement with the Coeur d'Alene [393] Mining Company.

Q. And what were they to do for the \$25,000?

A. Start driving a long cross cut.

Q. For the Coeur d'Alene Consolidated?

A. For the Coeur d'Alene Consolidated, on the 2800 foot level of the Coeur d'Alene Mines.

Q. And were you asked to put up any of the money for this \$25,000?

A. No, I wouldn't have it.

Q. Did you hear any discussions as to where that money was to come from?

A. None whatsoever.

Q. Did you have any knowledge that \$20,000 of that money came from the proceeds of the Pilot offering to the public?

A. I had no knowledge of it whatsoever.

Q. If anybody—whoever knew that fact did not advise you?

A. Definitely not.

Mr. Stocking: I would like to renew my offer of this exhibit number 39 at this time, if your Honor please.

Mr. Etter: I make the same objection as previously made.

The Court: Your objection is reiterated?

Mr. Etter: Yes, it's reiterated; it's not been shown to be connected up yet either. [394]

The Court: The ruling is re-reserved.

Mr. Stocking: Well, I wasn't sure whether that was one where you had reserved the ruling.

(Testimony of Joseph V. Grismer.)

The Court: Well, if I haven't reserved it, it is reserved now.

* * *

(Whereupon, at 4:30 o'clock P.M. the Court took a recess in this cause until Thursday, June 9, 1949, at 10 o'clock A.M.) [395]

* * *

(Whereupon, at 4:36 o'clock P.M. the Court took a recess in this cause until Thursday, June 9, 1949, at 10 o'clock A.M.)

Spokane, Washington, Thursday, June 9, 1949,
10 o'clock A.M. (Fourth day of trial.)

(All parties present as before, and the trial was resumed.)

* * *

[396]

(Whereupon, the following proceedings were had within the presence of the jury and two alternate jurors.)

The Court: Mr. Grismer was on the stand, as I remember it. He may resume the stand.

JOSEPH V. GRISMER

a witness called on behalf of the plaintiff, resumed the stand and testified further as follows:

Direct Examination (Continued)

By Mr. Stocking:

Q. Mr. Grismer, what compensation did you get from Extension and Pilot?

A. I got \$150.00 a month from the Extension,

(Testimony of Joseph V. Grismer.)

and I was supposed to get \$200.00 a month from the Pilot.

Q. Who made the arrangements as to what your compensation should be?

A. Mr. Allen told me that that's what it would be.

Q. Now, with respect to the \$150.00 a month for Extension, was that a full time employment you had in overseeing this work that was being done by the Big Friday, or was that part time?

A. It was part time. I was also employed by the Callahan [398] Consolidated, and I would take care of this in the evenings or at night.

Q. And you received that \$150.00 a month for approximately how many months, would you estimate?

A. It totalled approximately \$2800.00 over a period of years.

Q. From the Extension?

A. From the Extension, yes.

Q. And what about the Pilot?

A. I never received anything.

Q. You weren't paid your \$200.00 a month salary that had been arranged for?

A. No, I was not.

Q. Are you familiar with the Montana Leasing Company? A. I know of it.

Q. Have you ever been to the mining property of that company? A. Quite often.

Q. Where is that?

(Testimony of Joseph V. Grismer.)

A. It is at Neihart, Montana.

Q. And how did you happen to go to that property?

A. I would go at the request of Mr. Allen, to examine different things.

Q. Would you come over to the property to check on certain things in connection with mining operations? That's correct.

Q. About how many times did you make trips over to that [399] property?

A. That's quite hard to tell.

Q. Several, or just one or two?

A. Oh, yes, several times.

Q. Do you know what persons were interested in that company, the Montana Leasing Company?

A. It was my understanding it was Mr. Keane and Mr. Allen.

Q. And with regard to the mining operations of that company, do you know who was controlling the mining operations?

A. I took my orders from Mr. Allen.

Q. Did you ever go to the property with Mr. Keane, to your recollection?

A. I was never on the property with Mr. Keane.

Q. And now with regard to your work which was being done on the Pilot and Extension, from whom did you take your orders?

A. Oh, after we got started I issued my own orders.

Q. You were the superintendent of those jobs?

(Testimony of Joseph V. Grismer.)

A. Yes, I was manager of the property of the mine.

Q. After you started mining operations?

A. That's what I mean.

Q. But before that, from whom did you get your directions as to what the plan of operation was going to be?

A. That was worked out between Mr. Lakes and I as to what work should be done. [400]

Q. Yes, and were there any other times that you took any directions from anybody in connection with those companies?

A. Not regarding the work.

Q. Not regarding the work? A. No.

Q. How about regarding other activities in connection with the company?

Mr. Etter: Just a minute; I'm going to object to that question unless it's specific. What does he mean "Other activities in regard to the company"?

Mr. Stocking: Other activities other than regarding the actual development of the mining property.

Mr. Etter: I'm going to object to that as not being specific, and leaving a wide field for conjecture and speculation.

The Court: All right, I'll sustain the objection. You may be specific.

Q. (By Mr. Stocking): Did Mr. Keane give you any specific directions concerning other activities?

(Testimony of Joseph V. Grismer.)

Mr. Etter: I'll object to that question as leading and suggestive.

The Court: I'm in a difficult position. As to the question that was wholly unleading I sustained the objection. Now you must make your choice. The other question had no objection, in no wise was it leading; for [401] it to be specific it has to, to a degree, partake of being leading. I'll sustain either of your objections, but I can't sustain them both.

Mr. Etter: Well, I'll maintain both of them, and take an exception to the second one.

The Court: All right, if you're maintaining both, I'll reverse my original ruling. The witness may answer the general question which was entirely unleading.

Mr. Etter: May we have an exception?

A. (By Witness): Read the question, please.

(Whereupon, the reporter read the question, as follows: "How about regarding other activities in connection with the company"?)

A. I just wouldn't know what you mean by other activities.

Mr. Stocking: I think I followed that question up with another.

(Whereupon, the reporter read counsel's statement as follows: "Other activities other than regarding the actual development of the mining property.")

(Testimony of Joseph V. Grismer.)

Q. From whom did you take instructions?

A. I still wouldn't quite understand what other activities.

Q. Well, you performed functions other than your functions as superintendent of the mine in connection with these corporations, did you not?

A. In regarding the organizing of the company? [402]

Q. Yes. A. Yes.

Q. And under whose direction did you perform those functions?

A. All that was done under Mr. Allen's directions.

Q. And you did perform certain functions in connection with signing papers and as president of Extension, and at whose direction was that duty done?

Mr. Etter: I'd object to that as leading and suggestive likewise.

The Court: Overruled.

Mr. Etter: Exception.

Q. At whose direction was that usually done, then?

A. Any signing of papers was generally under Mr. Keane's direction.

Q. That was usually done under Mr. Keane's direction? A. Yes.

Q. So you took directions, then, from both Mr. Keane and Mr. Allen?

A. Mr. Keane was attorney for the company,

(Testimony of Joseph V. Grismer.)

and he took care of all the legal affairs, and that came under his heading.

Q. Now, there's been some testimony here that certain funds from these companies were issued to the Montana Leasing Company and other concerns. Did you have any knowledge of the fact that the funds of these companies were being issued to Montana Leasing Company and other concerns?

A. I had no knowledge of it.

Q. To your knowledge did you ever get any of these funds——

A. No, I never did.

Q. ——that were so issued?

A. I had no knowledge of any of the financial affairs of the company. I was denied access to all books and records.

Mr. Stocking: That's all.

Cross-Examination

By Mr. Etter:

Q. In your direct examination, Mr. Grismer, a question was asked you whether there was any discussion, whether there has ever been any discussion between you and Mr. Stocking or Mr. Erickson with regard to your testifying. I'll ask you, has there ever been any discussion with those gentlemen about your testifying here today or yesterday?

A. I just don't know what you mean by discussion.

Q. Well, did you discuss with them what your testimony was going to be?

(Testimony of Joseph V. Grismer.)

A. Vaguely, yes. They asked me a few questions.

Q. Vaguely. When did you have this discussion with them, Mr. Grismer?

A. Shortly before coming into the courtroom.

Q. Shortly before coming into the courtroom. Did you have any discussion with them prior to or on or about January 12, 1949?

A. It is possible. [404]

Q. It is possible. As a matter of fact, you did have discussion with them, didn't you, Mr. Grismer?

A. I'm quite sure——

Q. You're quite sure that you did?

A. ——that we talked things over in a general way.

Q. You came down a couple of times before January 12 and talked things over, isn't that so?

A. I never came down with the express purpose of talking anything.

Q. Prior to January 12 you were a joint defendant, were you not, in all seven counts upon which Mr. Allen is being tried?

A. Yes, I was indicted.

Q. On all seven counts, isn't that correct?

A. I presume.

Q. And on January 12 six counts were dismissed against you, were they not, Mr. Grismer?

A. Yes, sir.

Q. And leaving only one count?

A. That's right.

Q. To which you entered a plea of nolo contendere?

(Testimony of Joseph V. Grismer.)

A. That's right.

Q. Now, was there any discussion between you and Mr. Stocking and Mr. Erickson or any of the other government officials prior to the time these counts were dismissed in respect [405] to what your testimony would be or what your stand would be in the event those counts were dismissed?

A. We went over the general counts, and I proved to them that I was not guilty of these counts.

Q. You proved to them you were not guilty of the first six counts? A. Yes.

Q. So it was on the basis of a conversation—where did you have this conversation, Mr. Grismer?

A. When?

Q. Where you proved that you weren't guilty of the first six counts.

A. Did you say when?

Q. Where. A. Right here.

Q. Right here?

A. In the courthouse, in this building.

Q. And whose office was that?

A. I think it was the district attorney's office.

Q. And who was present at that time?

A. My attorney——

Q. That's Mr. Hawkins?

A. That's Mr. Hawkins, and Mr. Stocking, and Mr. Denney I think was there, and Mr. Erickson.

Q. So if I understand correctly what you did on that day, as [406] to count 1, using the mails to defraud, you proved to these gentlemen that you weren't guilty of that? A. I believe so.

(Testimony of Joseph V. Grismer.)

Q. In Mr. Erickson's office? A. Yes.

Q. And as to count 2, using the mails to defraud, you proved to those gentlemen you weren't guilty of that? A. That's the general idea.

Q. Beg your pardon?

A. I say that's the general idea..

Q. That's the general idea, and as to count 3 you proved that you were not guilty of count 3, using the mails to defraud? A. Yes, sir.

Q. And you proved that you were not guilty of count 4, which was a charge of fraud in the sale of a security? A. That's right.

Q. And likewise of count 5, fraud in the sale of a security, you proved that you were not guilty of that count? A. I suppose so.

Q. And count 6, you proved that you were not guilty of that count? A. That's right.

Q. Now, as to count 7, couldn't you prove that you weren't guilty of conspiracy, Mr. Grismer?

A. I thought I proved it to my satisfaction, but they didn't [407] see it that way.

Q. They didn't see it that way. They said then they would dismiss the six counts, after you proved you were not guilty of the six counts?

A. They held me on that count.

Q. And up until that time had you testified or given any information that you have given here this morning? A. Sir?

Q. Up until that time had you told any govern-

(Testimony of Joseph V. Grismer.)

ment official or anybody else what you've testified here this morning?

A. Well, it's still free speech, and I suppose I've talked it over.

Q. —and yesterday.

A. Oh, government officials—

The Court: Just a moment; you may read the entire question again.

(Whereupon, the reporter read the question as follows: "Up until that time had you told any government official or anybody else what you've testified here this morning and yesterday?")

A. I never made any particular effort to talk to any government official, and I don't think it was ever discussed in this light, but as far as anybody else, I will frankly admit that I've often talked things over with my friends.

Q. On January 12, or about that time, though, you did discuss [408] with the government, in your attempts to prove that you were not guilty, as you say here, you did discuss this testimony that you've given here yesterday and today?

A. I don't know whether I discussed the testimony as such; I merely explained my position.

Q. You explained your position?

A. That's right.

Q. You had not explained that position before that time? A. Not to the government officials.

Q. That's right. Weren't you subpoenaed before

(Testimony of Joseph V. Grismer.)

some administrative hearings of the Securities and Exchange Commission long prior to the return of this indictment?

A. I wish to retract that last answer. I said not to the government officials. By that I meant it wasn't necessary, I was not indicted.

Q. That's right.

A. And I hadn't expressed it to anyone during the indictment.

Q. Now I'll repeat the question, Mr. Grismer: Did you testify about this matter before an administrative hearing of the Securities and Exchange Commission long before this indictment was returned?

A. I was called before the Securities and Exchange Commission, yes.

Q. Yes, and you were placed under oath, were you not? A. I was placed under oath. [409]

Q. And you were asked substantially the same questions as you've been asked here today?

A. In a general line, yes.

Q. Did you answer those questions the same as you've answered them here in court yesterday and today?

A. I tried to answer all truthfully, to the best of my knowledge.

Q. Did you answer them the same as you've answered them here, Mr. Grismer?

A. That I couldn't tell.

Q. Well, as a matter of fact isn't it true that

(Testimony of Joseph V. Grismer.)

you did not answer them the same as you have here yesterday and today?

A. That's easy to use different grammar.

Q. Well, we'll go to some specific questions here. You stated in your direct testimony, Mr. Grismer, the other day, that you went to the Samuels Hotel, and you said this: "Mr. Allen then took me aside and said that they had decided to develop that piece of ground, or to promote a company on it, words to that effect which I can't recall, and that they had agreed that they would develop it through the Lucky Friday." Did you tell the Securities and Exchange Commission, did you give them that information at the hearing at which you were subpoenaed long prior to the time this indictment was returned against you?

A. Did I tell them that? [410]

Q. Yes.

A. I don't believe I was even asked that.

Q. You weren't asked that, so you didn't tell them that?

A. I answered what I was asked.

Q. What were you asked at that hearing?

A. Oh, my gosh, I was asked a multitude of questions; I can't recall them.

Q. Can you recall any of them?

A. I wouldn't know, there was so many of them.

Q. Weren't you asked this question, in substance and effect, weren't you asked whether or not Mr. Allen promoted the Lucky Friday Extension;

(Testimony of Joseph V. Grismer.)

weren't you asked that question in substance and effect, maybe over a period of two or three questions?

A. I know I was asked whether Mr. Allen was a promoter.

Q. That's correct.

A. My answer was, I said no, if he was a promoter his name would have appeared in the prospectus. That was the limit of my knowledge of the examination.

Q. That was the limit of your knowledge?

A. As to the legal aspect of it.

Q. The legal aspect of it?

A. I figured if a man was a promoter his name would have to appear on that, and if it did not appear——

Q. You told these people he wasn't a promoter, didn't you—— [411] A. I did.

Q. ——aside from the prospectus?

A. I just told you I believed his name would have to be on the prospectus to be a promoter. That was the limit of my knowledge at that time.

Q. Now, you stated here yesterday: "I was informed by Mr. Allen that that would be the name of it", referring to the Lucky Friday Extension.

A. That's right.

Q. Did you tell the Securities and Exchange Commission that?

A. I don't believe I was asked that.

Q. You don't believe you were asked that?

(Testimony of Joseph V. Grismer.)

A. No.

Q. You made this statement yesterday: "I thought at the time that Mr. Sekulic had owned the property."——

A. That's right.

Q. —— "After a few days it was brought to my attention that he did not own the property, and Mr. Allen told me that Mr. Lakes was to come in and that he and I would locate the property in my name". Did you tell the Securities and Exchange Commission that, Mr. Grismer?

A. I don't believe it was asked.

Q. You don't believe it was asked?

A. No.

Q. You stated here yesterday: "I was told that all the stock [412] would be issued to me for the property, and that I would then turn the stock back to the corporation, after endorsing all the certificates, which I did. Question: And who told you that? Answer: Mr. Allen." Did you tell the Securities and Exchange Commission at your hearing at which you were subpoenaed, did you tell them that, or give them that information?

A. If they asked me, they got that information.

Q. Well, don't you recall?

A. I don't recall.

Q. You don't recall. You stated here yesterday: "I was told that Mr. Keane would be the company's attorney and take care of all the financial affairs of the company. Question: And who told you that? Answer: Mr. Allen." Did you tell the Securi-

(Testimony of Joseph V. Grismer.)

ties and Exchange Commission that, Mr. Grismer, when you were subpoenaed before them well before this indictment was returned?

A. If they asked me, they got the same answer.

Q. Well, do you remember anything you told them at all?

A. Oh, I can remember quite a few things.

Q. All right, what did you tell them, then?

A. May I make a statement first?

Q. Just tell us the things you remember that you told them.

A. I was under a handicap there.

Q. All right. [413]

A. May I tell you what it is?

Q. No.

Mr. Stocking: I think the witness has a right to explain that.

The Court: Well, not at this time. There is re-direct. He may answer the question as put.

A. What's the question?

(Whereupon, the reporter read the question, as follows: "Just tell us the things you remember that you told them.")

A. Well, the main thing that stands out in my mind is regarding Mr. Allen being a promoter. I distinctly remember saying no, he was not, because had he have been a promoter his name would have appeared on that prospectus, and as I said before, that was the limit of my knowledge regarding the

(Testimony of Joseph V. Grismer.)

legal aspects of it, and so I figured he was not a promoter, and I stuck to that idea, and it was mighty hard for me to do any answer to these questions, because Mr. Allen had me in the office prior to entering the office of the Securities and Exchange Commission; Mr. Mullen was there; he particularly emphasized that his name was not to be mentioned at this hearing, that he had absolutely nothing whatsoever to do with it, and don't never mention my name, but I did, and that was still ringing in my ears. I'm telling you it's pretty hard to [414] testify when a friend tells you these things, and you don't want to get your friend in bad, and still tell the truth, and I stuck to the truth all the way through as I know it.

Q. You stuck to the truth where?

A. During the hearing.

Q. During the Securities and Exchange Commission hearing?

A. As I know it.

Q. So if Mr. Allen told you what you said, you didn't pay any attention to it anyway?

A. I tried to disregard Mr. Allen's story.

Q. And you told the truth, is that so?

A. As much as I know.

Q. As a matter of fact, wasn't the whole purpose of your examination at the Securities and Exchange Commission with reference to the connection if any between Mr. Keane and Mr. Allen, wasn't that the whole purpose of the inquiry directed to you?

(Testimony of Joseph V. Grismer.)

A. I wouldn't know what the purpose was; I can't read their minds.

Q. Didn't the commission ask you, as a matter of fact, if Mr. Keane and Mr. Allen weren't the promoters of these properties?

A. They perhaps did; I wouldn't know for sure.

Q. And what did you say, "no"? [415]

A. I wouldn't know for sure.

Q. And what did you say when they asked if Mr. Allen went out and acquired these properties?

A. I wouldn't know.

Q. All you can recall is that they asked you whether or not Mr. Allen was a promoter, is that so?

A. That's the main outstanding factor in my mind.

Q. You don't remember anything else about it?

A. Oh, if anything was brought up I could recall.

Q. All right, you testified here as follows yesterday: "We owned the eight claims, patented now, and we held on for a good many years; there was a great deal of work done, and a mighty good showing. When this war came along my partners decided that it was time that we organized and developed the ground, and I was talking about organizing the Pilot Company, and so forth, and I talked it over with Mr. Allen, and he then made the statement that it would take us a great deal of time and money to organize and raise the money to do the

(Testimony of Joseph V. Grismer.)

work, while he says "We can do it in a few weeks." Did you tell that to the commission when you testified here over a year, probably, or sometime prior to the return of this indictment?

A. I don't believe I was asked that.

Q. You don't think you were asked that. You stated here as follows, yesterday: "It was to be on the same scale and [416] plan and the same organization that took the Extension, meaning Mr. Keane and I presume Mr. Allen was to participate all the way through like they had in the Extension. We organized the Pilot Mining Company, and"—did you tell that to the commission when you testified under subpoena prior to the time this indictment was returned, Mr. Grismer?

A. I do not believe I was asked that.

Q. You stated here "I told Mr. Allen that that would be a desirable group to have in there to make a good compact group of mining claims. Question: Did they lay next to the properties that you were putting in? Answer: They adjoined it. Question: Yes. Answer: And Mr. Allen told me to see Mr. Herrick." Did Mr. Allen tell you to see Mr. Herrick?

A. Yes, at that time.

Q. Did you tell the commission that, prior to the return of this indictment?

A. If they asked me, that would be the answer they got.

Q. Do you remember whether you did or not?

A. I do not remember.

(Testimony of Joseph V. Grismer.)

Q. "Question: And, you went there at Allen's direction? Answer: Yes." You testified that yesterday? A. Yes.

Q. Did you tell the commission that?

A. If they asked me they got that answer. [417]

Q. If they asked you they got that answer?

A. Yes.

Q. Here was a question addressed to you, Mr. Grismer, yesterday: "Do you know Mrs. Emeline Phelan? Answer: Mrs. Phelan, yes, the Phelan Group, they call it. I went to see her too, and started negotiations, and reached an agreement, and turned her over to Mr. Allen." Will you tell us why you answered that way?

A. I don't quite understand.

Q. The question was "Do you know Mrs. Emeline Phelan". The answer was "Mrs. Phelan, yes, the Phelan group, they call it. I went to see her too, and started negotiations, and reached an agreement, and turned her over to Mr. Allen." Why did you answer that particular question that way yesterday?

A. I don't know how else it should have been answered.

Q. Well, didn't Mr. Stocking merely ask you "Do you know Mrs. Emeline Phelan"? Couldn't you have said yes or no? A. You're right.

Q. You could have said yes or no?

A. I could have, yes.

Q. But you said "Mrs. Phelan, yes, the Phelan

(Testimony of Joseph V. Grismer.)

group, they call it. I went to see her too, and started negotiations, and reached an agreement, and turned her over to Mr. Allen." You wanted to be sure to get Mr. Allen in there, didn't [418] you, Mr. Grismer?

A. I'll tell you why I answered it that way.

Q. All right.

A. Prior to that question, Mr. Stocking asked regarding the accumulation of surrounding properties, and it was in answer to that question, and taking the surrounding properties as a whole, I answered it that way.

Q. All right, let's go back a few questions and see if that's so. "Question: And who made the negotiations, as to what arrangements were made with Mr. Herrick? * Answer: I started all the negotiations with Mr. Herrick. He was somewhat reluctant to go in, as he had another deal on with some other people, but I kind of talked him out of it, and convinced him that he'd have quicker action with the Pilot, sincerely I thought so, and after he more or less agreed that he would talk business, I turned him over to Mr. Allen. Question: Whatever final arrangements were made were not made by you? Answer: No. Question: They were made by Mr. Allen? Answer: I don't know whether it was Mr. Keane or Mr. Allen. Question: I see. Now, were there some other properties involved? Answer: There was the—I can't recall that. Question: Do you know Mrs. Emeline Phelan? Answer:

(Testimony of Joseph V. Grismer.)

Mrs. Phelan, yes, the Phelan group, they call it. I went to see her too, and started negotiations, and reached an agreement, and turned her over [419] to Mr. Allen."

A. What about that?

Q. That's what I'm asking you; "and turned her over to Mr. Allen". Did he ask you that at all?

A. But prior to——

Q. Did he ask you anything about Mr. Allen in that question? A. No, he didn't.

Q. As a matter of fact, you had discussed that particular part of your testimony with all of counsel before you came in here, hadn't you?

A. Discussed it right here.

Q. And before you came in to testify yesterday?

A. He said, "We'll now talk about the surrounding properties you're taking", in other words, to that effect, and it's that I was working on.

Q. Mr. Grismer, did you discuss that with counsel before you testified yesterday, these answers?

A. I did. They were aware of it.

Q. Now, you made this statement yesterday: "All this stock was brought to me, all these certificates, and it was insisted that I endorse them all before they went into escrow. Question: Who insisted that you endorse them?

Answer: Mr. Allen."

A. That is correct.

Q. That's correct? Did you tell the Securities and Exchange [420] Commission, did you give them

(Testimony of Joseph V. Grismer.)

that information or answer any question with respect to that subject matter when you testified before the Commission under subpoena sometime, a long time. I'll say, prior to the return of this indictment?

A. I'm quite sure they never asked me that, so I never.

Q. You're quite sure they never asked you that?

A. No.

Q. Now, a question yesterday: "Has that all disappeared? Answer: I loaned Mr. Allen 100,000 shares, and 300,000 shares disappeared, leaving me 75,000." You recall that yesterday? A. Yes.

Q. Did you tell the Commission about that when you were testifying under subpoena sometime prior to the return of this indictment?

A. As I stated before, I didn't want to mention Mr. Allen any more than necessary.

Q. Mr. Grismer, I'll ask you if you gave that information to the Commission, yes or no, if you remember? A. I couldn't recall.

Q. You couldn't recall? A. No.

Q. You said this the other day: "Question: Now, in connection with the Pilot, I think you mentioned previously that you had at one time visited Elmer Johnston's office, was that [421] your testimony? Answer: Yes, I did visit Elmer Johnston's office regarding the prospectus of the Pilot. Question: Who, if anyone, accompanied you there? Answer: I am quite sure that Mr. Allen was with

(Testimony of Joseph V. Grismer.)
me.” Did you mention that at all, Mr. Grismer, to the Commission when you were testifying under subpoena sometime prior to the return of this indictment?

A. I wouldn’t know. I don’t think they asked me.

Q. You testified as follows yesterday: “I was in Mr. Allen’s office, and we were talking things over in general, and he said “You know” he said “we made agreements, verbal agreements, whereby we could borrow stock from each other, and so on”. I said “That’s right”. We entered into an agreement where I could borrow from him if I needed any, which I never did, and he could borrow from me, and I says “That is correct” and he says “There is no reason, then, why we can’t put that in writing”, and I says “I can’t see no reason why we can’t put it in writing” and that agreement was entered into at the time the Lucky Friday Extension Mining Company was incorporated.” Do you remember testifying to that the other day?

A. Yes.

Q. Did you tell the Commission, at their hearing sometime prior to the return of this indictment, did you give them that information? [422]

A. Not prior to the indictment, no.

Q. Well, did you give them that information at the hearing where you were subpoenaed to testify before the Commission?

A. I’m quite sure not.

(Testimony of Joseph V. Grismer.)

Q. You're quite sure not?

A. Because at that time, why, it wasn't even in writing.

Q. Did you have this oral agreement at the time you said here it was entered into, at the time the Lucky Friday Extension was incorporated? That was in 1945, wasn't it? A. 1945.

Q. And you had the oral agreement then?

A. That's right.

Q. Now, you testified before the Commission in what, 1947? A. That's right.

Q. Did you tell them at that time about this information?

A. I'm quite sure I did; I told them we borrowed from each other, and loaned, and so forth.

Q. As a matter of fact, didn't you tell them you borrowed and loaned stock back and forth, and that was the only arrangement Mr. Allen ever had with your company, isn't that what you told the Commission, that the only arrangements Mr. Allen had were with you personally, you loaned him stock and he loaned you stock, and that he didn't have anything else to do with the company?

A. Oh, no, I couldn't do that; that would be perjury. [423]

Q. Yes, I know, but did you tell them that?

A. Oh, no, of course not.

Q. Mr. Grismer, when did you first meet Mr. Allen?

A. I don't recall whether it was '37 or 1938.

(Testimony of Joseph V. Grismer.)

Q. And what was the circumstance of the meeting you had with Mr. Allen?

A. I think I was introduced to Mr. Allen by Mr. Howarth.

Q. Mr. Howarth? A. Howarth, yes.

Q. Who was a broker?

A. A broker at the time.

Q. Mr. Allen was then associated with Callahan Consolidated?

A. He was interested in that, yes.

Q. That's right, and weren't you—what was the purpose in your meeting, if you had one, at that time?

A. I just completed a contract for the shaft at the Coeur d'Alene Mines, and was temporarily out of work awaiting another contract when Mr. Howarth approached me on whether I would take charge of the Callahan Consolidated. I told him I would entertain the idea, and he introduced me to Mr. Allen, and that was the beginning of our association.

Q. And you and Mr. Allen worked out a deal, didn't you, where you were going to do some tunnel work? A. Yes.

Q. And you did get that job or that contract, whatever it was? [424]

A. I took the job or contract, more or less, yes.

Q. Through Mr. Allen?

A. I believe so, yes.

(Testimony of Joseph V. Grismer.)

Q. Then you became, did you not, quite closely associated with Callahan and with Mr. Allen?

A. I've known Mr. Callahan for a long time.

Q. Yes, but you came to be quite closely associated with the company? A. Oh, yes.

Q. As a matter of fact, didn't you have a position with the Callahan Consolidated then for many years? A. I did.

Q. Beg your pardon? A. I did.

Q. And what was your official position?

A. Mine superintendent.

Q. And you and Mr. Callahan and Mr. Allen all worked quite closely together, didn't you, Mr. Grismer?

A. As long as Mr. Allen was in the association, yes.

Q. And likewise you and Mr. Allen worked closely together on other mining matters after his disassociation from Callahan, isn't that true?

A. Yes, you bet.

Q. Isn't it true that you and Mr. Allen over a long period of years have been in different ventures together? [425] A. That is right.

Q. And you have exchanged stocks back and forth, Mr. Allen has traded you and you've traded him?

A. Well, I never borrowed any from him.

Q. I didn't say borrow; did you trade stocks with him at different times?

(Testimony of Joseph V. Grismer.)

A. I got some stocks in payment of different stocks he borrowed off of me, in part payment.

Q. That's right, you gave him certain stocks and he borrowed some?

A. I never gave him; he simply took.

Q. He borrowed some?

A. He borrowed some, yes.

Q. And you've received stocks from him?

A. I've received some, yes.

Q. And the Lucky Friday Extension, when that was first started isn't it a fact that you went to Mr. Allen and asked Mr. Allen to help you personally in the matter? A. Personally?

Q. Yes, to ask him his advice; didn't you go to Mr. Allen?

A. Not to my knowledge. I'm a shaft man; I know my business.

Q. Didn't you go to Mr. Allen and ask him about helping you with certain administrative and organizational problems of Lucky Friday Extension?

A. Lucky Friday Extension? [426]

Q. Yes. A. Oh, no.

Q. You didn't?

A. You mean to start the company?

Q. Yes. A. Why, no.

Q. Was it proposed to you, then, first? Did somebody propose it to you first?

A. It was what you might say broadcasted.

Q. It was broadcasted. Now, this meeting, this

(Testimony of Joseph V. Grismer.)

first meeting that you talk about in Pat's Cafe, is that the place you're talking about?

A. That's right.

Q. Now, who was there besides you and Mr. Sekulic and Mr. Allen? Was Mr. Keane there?

A. He was there.

Q. Mr. Halin, of Spokane, was he there?

A. No, I don't believe he was.

Q. Are you sure that he wasn't?

A. I'm quite sure.

Q. And who else was there, if you remember?

A. Bob McDonald was there.

Q. Was Mr. Horning there?

A. No, he was not.

Q. Who else, if you recall? [427]

A. Well, there was quite a few, not very many, but I don't quite recall who else; I know there were two soldiers there.

Q. Isn't it a fact Mr. Sekulic proposed the organization of this company?

A. He proposed the development of that particular piece of ground.

Q. He proposed the development of that particular piece of ground?

A. He was the first one to approach it.

Q. He was the first one to propose it?

A. Yes.

Q. And how did he propose that he organize the company? Did he say anything about how much money each of the people present would contribute?

(Testimony of Joseph V. Grismer.)

A. That was never discussed in my presence.

Q. Do you recall whether or not he said "Let's all put in \$500.00 and get this company going"?

A. I recall someone making that statement, that we can get \$500.00 here, and \$500.00 there, and so forth.

Q. Didn't Mr. Sekulic say "I'll put in \$500.00"?

A. I don't recall him saying it; undoubtedly he would.

Q. Didn't a couple of other people say——

A. If they did I didn't hear it.

Q. And as a matter of fact, didn't Mr. Allen say "I'm not [428] interested, I'm not going to put any in"?

A. I don't know, but I remember him going to the 'phone and calling Kenny.

Q. Kenny Egan?

A. Egan, in Montana, and——

Q. And then coming back and saying "I'm not interested"?

A. No; as a matter of fact he said "I have \$500.00".

Q. Didn't Mr. Halin say "I'm not interested either"?

A. Mr. Halin was reluctant to go in.

Q. But you say Mr. Allen, the defendant, wasn't reluctant?

A. This was the following day, what we're talking about now, not in Pat's Bar.

(Testimony of Joseph V. Grismer.)

Q. All right, let's go to the following day. Who were present at that time?

A. I don't recall; there was a big crowd in the Metals Bar.

Q. Mr. Halin?

A. I think he was present the second day.

Q. You were present?

A. Partly, after shift.

Q. Mr. Keane? A. Mr. Keane.

Q. Mr. Sekulic?

A. I don't believe Mr. Sekulic was there the next day.

Q. Mr. Allen? A. Yes. [429]

Q. Mr. Horning? A. I wouldn't recall.

Q. Mr. McDonald?

A. Yes, it was in his place that we were.

Q. What did Mr. Sekulic say at that time about the financial condition of the Lucky Friday, commonly called the Big Friday? Did he say anything about it?

A. Not in my presence it was never discussed.

Q. Do you know what the financial condition of the Big Friday was at that time?

A. No. I didn't think it was very bright, of course.

Q. And Mr. Sekulic of course was president of the Big Friday, wasn't he?

A. Whether he was at that time I don't know.

Q. If he wasn't president he had a large interest in it, didn't he? A. Yes.

(Testimony of Joseph V. Grismer.)

Q. And still has? A. I presume so.

Q. And has been connected with it for many, many years? A. Yes.

Q. And don't you recall he said something about the financial condition of the company not being too good at that time?

A. Not to my knowledge, in my presence.

Q. But he proposed, did he not, this proposition of working [430] the Lucky Friday Extension, which was adjacent to the Lucky Friday, through a tunnel that would be driven across to the Extension Ground from the Big Friday or Lucky Friday main—what do you call it—tunnel?

A. Shaft.

Q. Yes, excuse me.

A. Not in my presence.

Q. Didn't say it in your presence?

A. No.

Q. All right. Well, then, when was the first time, Mr. Grismer, that you knew much about what was going to be done with this ground?

A. That evening when I came home from work.

Q. When you came home from work?

A. Yes.

Q. And you went into the Samuels Hotel and in the Metals Club there? A. Yes.

Q. And you say Mr. Allen talked to you at that time? A. That's right.

Q. And told you they were going to go through with that deal?

(Testimony of Joseph V. Grismer.)

A. They were going to develop the property or promote, I don't know which words he used.

Q. You had a number of claims in that, did you not? A. I didn't right in that. [431]

Q. Then what arrangement was made with you about the claims, so-called, that you later acquired?

A. There wasn't anything done that day, and about the following day, I believe it was, when I came off shift, I mean, I was informed by Mr. Allen that Arthur Lakes would be in and that the two of us would go up and survey and relocate the claims.

Q. And you did that? A. We did that.

Q. And you surveyed and relocated them in whose name? A. In my name.

Q. And after that what did you do? Did you transfer them over to the Lucky Friday Extension?

A. That was the general idea, yes.

Q. For this large block of stock? A. Yes.

Q. Now, at the time that the organization of that company was proceeding, Mr. Grismer, did you know anything about a proposed plan of the Lucky Friday Extension to finance the approach to the Lucky Friday Extension from the Lucky Friday? Did you know about a proposed financial arrangement at that time?

A. I didn't know anything until the proposal was brought to me in writing.

Q. Well, now, as a matter of fact—— [432]

A. I might have heard vague rumors.

Q. ——matter of fact, wasn't it understood that

(Testimony of Joseph V. Grismer.)

when you went out and located those claims, that you would transfer some of them over to the Big Friday or the Lucky Friday, wasn't that the understanding? A. Not my understanding.

Q. It wasn't your understanding? A. No.

Q. What was your understanding?

A. I was just to locate the claims.

Q. You didn't know any of them were to be transferred over to the Lucky Friday?

A. Not until I got the contract.

Q. And what did the contract provide just in general on that score? A. It did.

Q. What was it?

A. It provided that we would locate two claims, it mentioned them, adjoining the Lucky Friday which it seems that the Lucky Friday, that's the Big Friday, claimed they owned, and that after located, it was merely to perfect the location, we were to transfer back or deed back to the Lucky Friday I think a one half interest in the claims, or was it all, and receive half the ore, something like that.

Q. You were likewise to advance an undisclosed amount of money [433] for development work in the Big Friday, that was the Lucky Friday, to enable them to come over to the Extension?

A. That was in the contract.

Q. You thought that was a good idea yourself?

A. I refused to sign the contract.

Q. You never did sign it?

(Testimony of Joseph V. Grismer.)

A. I later on did, yes.

Q. And pursuant to that, the Lucky Friday Extension did put considerable money, sixty or seventy thousand dollars, into the development, isn't that right?

A. Subsequently there was a lot of money spent there, yes.

Q. A lot of money spent mining? A. Yes.

Q. And is it your recollection that after this money was spent, the development work done, that the value of the Big Friday stock increased immeasurably? A. Definitely.

Q. It did? A. It certainly did.

Q. Not only increased immeasurably the stock, but the company started to make money?

A. That's right.

Mr. Stocking: We'll object to the cross-examination on the value of the stock of the Big Friday with this witness. [434]

Mr. Etter: I think it's certainly material in following who were the interested parties, whether or not the defendant was a promoter within the purview of the indictment, or other people had an interest. It's entirely competent, your Honor.

The Court: Probably this cross-examination exceeds the right of the defendant, in other words, it's on a subject that was not developed in direct examination, but it must be remembered that this witness was named on the indictment, that he's testified, and there should probably be substantial liberality

(Testimony of Joseph V. Grismer.)
in the cross-examination. The objection is over-ruled.

Q. (By Mr. Etter): Any time, Mr. Grismer, isn't it so, since you've been acquainted with Mr. Allen, any time you had a problem that involved administration or bookkeeping or something, you've always come to Mr. Allen and asked him what he'd do, haven't you? A. Often, yes.

Q. You've called him any number of times and asked him for his assistance and help, haven't you?

A. Just in what respect?

Q. On some particular purchase problem of a claim, or something like that?

A. I did talk nearly everything over with him, yes.

Q. That's correct? [435]

A. That is correct.

Q. He didn't come to you, did he, Mr. Grismer?

A. Lots of times.

Q. Yes, about what? For instructions from you on how to buy a claim?

A. Well, about different claims and so forth, because he knew I knew where everything was.

Q. Oh, yes, the information as to claims.

A. Information, yes.

Q. But you came to him any number of times and asked his advice as to administrative matters, purchases, and one thing and another, didn't you, titles and all that sort of thing?

(Testimony of Joseph V. Grismer.)

A. I could have asked him several times; in fact, I'm quite sure.

Q. You as a matter of fact had been dealing or trying to deal with Mr. Herrick, who testified here, you were trying to deal with Mr. Herrick before you ever talked to Mr. Allen about it, weren't you?

A. Oh, no.

Q. Isn't that so? A. No, I did not.

Q. All right, when did you, or when was the first time you talked to Mr. Herrick?

A. I discussed the situation with Mr. Herrick regarding the [436] adjoining ground.

Q. When?

A. Why, during the time or about when the Pilot was being organized or incorporated.

Q. Well, did Mr. Allen discuss with you the Pilot at that time, or did he discuss with you a deep development program through that entire area which would include numerous companies, Lucky Friday, Pilot, Hunter, Homestake and a number of others?

A. We discussed the possibility of eventually getting hold of the Gold Hunter.

Q. Yes, and Allen had discussed with you many times this deep development program, hadn't he?

A. Yes, that would be a deep development program.

Q. Which would have its access through the Gold Hunter? A. That's right.

Q. And Mr. Allen you knew was then in nego-

(Testimony of Joseph V. Grismer.)

tiations with a man named Murphy in Chicago with reference to the purchase of the Gold Hunter?

A. I believe he was.

Q. And you and Mr. Allen had discussed this deep program for a long time and a number of years?

A. During the time of the organization of the Pilot.

Q. And Mr. Allen's interest was associating all of these various companies into the central development program? [437]

A. That was the interest, yes.

Q. And that included the Extension and the Pilot both?

A. Well, the Extension could not be developed through the Gold Hunter.

Q. But that included the Pilot? A. Yes.

Q. And that was his interest when he discussed with you the matter of the organization of the Pilot, the central development program?

A. Certainly we planned on a deep development; it has to be deep development there.

Q. Of course it does. Now, when Mr. Herrick, when you brought Mr. Herrick up to talk with Mr. Allen, that's what you and Mr. Allen discussed with Mr. Herrick?

A. I never discussed anything with Mr. Herrick in the presence of Mr. Allen.

Q. But you know that's what you and Mr. Allen discussed? A. That's definitely.